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STAND FOR SAN JOSE, EILEEN HANNAN,
MICHELLE BRENOT, ROBERT BROWN, KAREN
SHIREY, FRED SHIREY, AND ROBERT SHIELDS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

STAND FOR SAN JOSE; EILEEN
HANNAN; MICHELLE BRENOT;
ROBERT BROWN; KAREN SHIREY;
FRED SHIREY; and ROBERT SHIELDS,

Petitioners and Plaintiffs,

v.

CITY OF SAN JOSE; CITY COUNCIL OF
THE CITY OF SAN JOSE;
REDEVELOPMENT AGENCY OF THE
CITY OF SAN JOSE; DIRIDON
DEVELOPMENT AUTHORITY; DOES 1
through 10, inclusive,

Respondents and Defendants.

ATHLETICS INVESTMENT GROUP LLC;
DOES 11 through 20, inclusive,

Real Parties in Interest.

Case No. 111-CV-214196, related to and
consolidated with
Case No. 113-CV-250372

DECLARATION OF MARNE S.
SUSSMAN IN SUPPORT OF
PETITIONERS' OPPOSITION TO
MOTION TO CONTINUE TRIAL
DATE

Date: May 19, 2014
Time: 9:00 a.m.
Dept. 21
Judge: Honorable Joseph Huber

Actions Filed: 12/2/2011; 7/30/13

1 I, Marne S. Sussman, declare:

2 1. I am an attorney at law, duly admitted to practice before the courts of the
3 State of California, and I am an associate with the law firm of Pillsbury Winthrop Shaw
4 Pittman LLP ("Pillsbury"), counsel of record for Petitioners Stand for San Jose, Eileen
5 Hannan, Michelle Brenot, Robert Brown, Karen Shirey, Fred Shirey, and Robert Shields
6 (collectively, "Petitioners") in the above-captioned matter. I have personal knowledge of the
7 facts set forth herein which are known by me to be true and correct and, if called as a
8 witness, I could and would competently testify thereto. This declaration is submitted in
9 support of Petitioners' Opposition to Motion to Continue Trial Date.

10 2. These consolidated actions were filed on December 2, 2011 ("SFSJ I") and
11 July 30, 2013 ("SFSJ II"), respectively.

12 3. On February 14, 2014, a Case Management Conference ("CMC") was held in
13 these consolidated actions at which time the Court set an August 8, 2014 trial date. At the
14 CMC, Respondents reminded the Court that the Option Agreement with Athletics Investment
15 Group ("AIG") to purchase the Diridon Properties expires on November 7, 2014. A true and
16 correct copy of the CMC transcript is attached hereto as Exhibit 1.

17 4. Concurrent with this lawsuit, the City is pursuing a lawsuit against Major
18 League Baseball ("MLB") which is currently pending in the Ninth Circuit. In that lawsuit,
19 the City relies on the validity of the Option Agreement with AIG to support "anti-trust
20 standing". In February 2014, the City filed a request to expedite the briefing and hearing of
21 that case on appeal. On February 20, 2014, the Ninth Circuit granted an order expediting
22 appeal. A true and correct copy of that order is attached hereto as Exhibit 3. On April 28,
23 2014, MLB filed a Reply in Support of Motion to Take Judicial Notice with the Ninth
24 Circuit. A true and correct copy of that document is attached hereto as Exhibit 2.

25 5. From June 2013 until February 2014, the consolidated SFSJ cases were on
26 hold pursuant to a stipulation of the parties while the Oversight Board approved a Long

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28

1 Range Property Management Plan ("LRPMP") which includes the Diridon Properties at
2 issue in the Option Agreement with AIG.

3 6. During the period of June 2013 through February 2014, Petitioners submitted
4 numerous letters to the Oversight Board arguing that the Oversight Board can not recognize
5 the Option Agreement as an enforceable obligation and that it should direct the sale of the
6 Diridon Properties to the highest bidder. A true and correct copy of Petitioners' June 26,
7 2013 letter to the Oversight Board is attached hereto as Exhibit 4.

8 7. On July 30, 2014, Petitioners filed their petition in SFSJ II, naming the
9 Oversight Board as a Respondent for the first time.

10 8. On August 12, 2013, Petitioners again sent a letter to the Oversight Board,
11 demanding it declare the Option Agreement with AIG unenforceable. A true and correct
12 copy of this letter is attached hereto as Exhibit 5.

13 9. On August 19, 2013, Petitioners served the Oversight Board with the first
14 amended petition and summons in SFSJ II.

15 10. On September 25, 2013, October 9, 2013, January 8, 2014, and January 29,
16 2014, Petitioners again sent letters to the Oversight Board, demanding it declare the Option
17 Agreement with AIG unenforceable. True and correct copies of those letters are attached
18 hereto as Exhibits 6, 7, 8, and 9.

19 11. On February 14, 2014, a CMC was held in these consolidated actions at
20 which time the Court set an August 8, 2014 trial date. On March 6, 2014, all parties,
21 including the Oversight Board, stipulated to a briefing schedule including the August 8, 2014
22 trial date.

23 12. On March 11, 2014, Petitioners served the second amended petition and
24 summons on the Oversight Board for SFSJ II. The same day, the court entered an order
25 based on the parties' stipulated briefing schedule.

26 13. During the course of January 2014 through May 2014, the Oversight Board
27 discussed numerous times the potential to retain independent counsel for the SFSJ lawsuit.

1 The transcript of the January 30, 2014 Oversight Board meeting reflects that the Oversight
2 Board discussed the possible need for independent counsel at that time. A true and correct
3 copy of the transcript is attached hereto as Exhibit 10.

4 14. In addition, at the February 13, 2014 Oversight Board meeting, the Oversight
5 Board and the City Attorney were scheduled to discuss the possible need for independent
6 counsel in closed session. A true and correct copy of the agenda of this meeting is attached
7 hereto as Exhibit 11.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct.

10 Executed this 16th day of May, 2014, at San Francisco, California.

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Marne S. Sussman

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1 Case No. 111-CV-214196; related to and consolidated with Case No. 113-CV-250372

2 PROOF OF SERVICE BY HAND DELIVERY

3 I, Douglas Wright, and Anthony Trujillo, the undersigned, hereby declare as follows:

4 1. We are over the age of 18 years and are not a party to the within cause. We
5 are employed by Nationwide Legal LLC in the City of San Francisco, California.

6 2. Our business address is 859 Harrison Street, Suite A, San Francisco, CA 94107.

7 3. On May16, 2014, we served a true copy of the attached document titled exactly

8 DECLARATION OF MARNE S. SUSSMAN IN SUPPORT OF PETITIONERS'

9 OPPOSITION TO MOTION TO CONTINUE TRIAL DATE by placing it in an addressed
10 sealed envelope clearly labeled to identify the attorney being served at the address shown
11 below and delivering it to the attorney, or to the office of the attorney and leaving it with a
12 receptionist or other person having charge thereof, or (if there was no such person at the
13 office) by leaving it between 9 A.M. and 5 P.M. in a conspicuous place in the office. Such
14 service was effected on the following attorneys:

15 Richard Doyle, Esq.
16 Nora Frimann, Esq.
17 Ardell Johnson, Esq.
18 Assistant City Attorney
19 City of San Jose
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113
(served by Douglas Wright)

Geoff L. Robinson, Esq.
Perkins Coie LLP
Four Embarcadero Center, Suite 2400
San Francisco, CA 94111
(served by Anthony Trujillo)

20 We declare under penalty of perjury that the foregoing is true and correct. Executed
21 this 16th day of May, 2014, at San Francisco, California.

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Exhibit 1

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNT OF SANTA CLARA

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6 STAND FOR SAN JOSE, ET AL.,)

7 PLAINTIFFS,)

8 VS.)

NO. 1-11-CV-214196

9 CITY OF SAN JOSE, ET AL.,)

10 DEFENDANTS.)
11

12
13 CASE MANAGEMENT CONFERENCE

14
15 FEBRUARY 14, 2014
16
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18
19

20 APPEARANCES:

21 FOR THE PLAINTIFFS:

BLAINE I. GREEN
ATTORNEY AT LAW

22
23 FOR DEFT. CITY OF SAN JOSE:

ARDELL JOHNSON
CHIEF DEPUTY CITY ATTY.

24
25 FOR THE REAL PARTY ATHLETICS
26 INVESTMENT GROUP:

GEOFFREY L. ROBINSON
ATTORNEY AT LAW

27 OFFICIAL COURT REPORTER:

CATHY JAMELLO
C.S.R. NO. 5653
28

1 SAN JOSE, CALIFORNIA

MORNING SESSION

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P R O C E E D I N G S

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THE COURT: GOOD MORNING EVERYONE. I'M JOE HUBER. WE HAVE A COUPLE OF CALENDARS THIS MORNING. ONE IS THE UNLAWFUL DETAINER CALENDAR, JUDGE WOODHOUSE'S CALENDAR. I BELIEVE I ALSO HAVE IT NEXT WEDNESDAY AND THURSDAY AS WELL, PLUS I HAVE ANDY'S B & P ON THE C.E.Q.A. CALENDAR AND AT 10:00 I HAVE A C.M.C., ET CETERA.

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WHAT I'M GOING TO DO NOW -- FIRST OF ALL, LET'S INTRODUCE JEEJEE VISCONDE IS THE COURTROOM CLERK, CATHY JAMELLO IS OUR REPORTER, AND DEPUTY RODRIGUEZ IN CHARGE OF THE COURTROOM.

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(WHEREUPON, OTHER CASES WERE TAKEN.)

THE COURT: ALL RIGHT. IN THE MIDST OF ALL, WE HAVE STAND FOR SAN JOSE C.M.C. I RECEIVED SOMETHING THIS MORNING.

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MR. JOHNSON: THAT WAS PROBABLY --

THE COURT: I THINK IT WAS THE CITY'S AND I HAVE NOT READ THIS YET, BECAUSE I HAVE BEEN ON THIS OTHER CALENDAR. SO WE WERE HERE ABOUT A MONTH AGO, SIX WEEKS AGO. SOMEBODY IS REQUESTING THAT I SET IT FOR TRIAL, BECAUSE IT'S GOING TO TAKE FOREVER AND A DAY TO GO THROUGH THIS PROCESS. I THINK I SAID AT THAT TIME THAT I'M PREPARED TO DO THAT.

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MR. JOHNSON: YES, YOUR HONOR. ARDELL JOHNSON FOR THE CITY OF SAN JOSE.

1 MR. GREEN: BLAINE GREEN FOR THE PETITIONER,
2 STAND FOR SAN JOSE, ET AL.

3 MR. ROBINSON: GEOFF ROBINSON FOR REAL PARTY
4 ATHLETICS INVESTMENT GROUP.

5 THE COURT: WHY SHOULDN'T I SET IT, EVEN IF I
6 SET IT DOWNSTREAM A BIT?

7 MR. JOHNSON: LET ME BRING YOU UP TO SPEED SINCE
8 WE LAST MET.

9 THE COURT: OKAY.

10 MR. JOHNSON: THE OVERSIGHT BOARD MET YESTERDAY
11 AND VOTED TO ADOPT THE LONG-RANGE PROPERTY MANAGEMENT
12 PLAN SUBJECT TO THE STAFF GETTING TOGETHER AND TWEAKING
13 SOME LANGUAGE THAT PERTAINS TO THREE OR FOUR PROPERTIES
14 THAT HAVE NOTHING TO DO WITH THE PROPERTIES INVOLVED IN
15 THIS LITIGATION. SO IT'S BASICALLY A DONE DEAL AT THIS
16 POINT.

17 THE SUBMISSION TO THE D.O.F. WILL HAPPEN NO
18 LATER THAN THE LAST DAY OF THIS MONTH. AND THEN
19 ACTION -- THE D.O.F. ACTION BEST GUESS COULD BE ANYWHERE
20 FROM THREE TO SIX MONTHS. BUT, YOU KNOW, AT THIS POINT
21 I'VE GOT TO TELL YOU, BASED ON THE OVERSIGHT BOARD'S
22 HANDLING OF THIS, THAT'S JUST A GUESS ON MY PART, BUT
23 THAT'S THE BEST -- THAT'S THE BEST VISION FORWARD THAT WE
24 HAVE AT THIS POINT IN TIME.

25 THE COURT: MOVING ALONG, GOT SOMEWHERE AT LEAST
26 SINCE THE LAST TIME?

27 MR. JOHNSON: LAST TIME WE WERE HERE, I'M AWARE
28 YOU TALKED ABOUT SETTING THE MATTER FOR TRIAL IF

1 APPROVED. I'M NOT GOING TO ARGUE TOO STRENUOUSLY AGAINST
2 THAT. WE DON'T KNOW WHAT'S GOING TO HAPPEN WITH THE
3 D.O.F. IN TERMS OF WHAT IT WILL DO OR WHETHER THE ACTION
4 THAT IT ULTIMATELY TAKES WILL AFFECT THIS LITIGATION OR
5 NOT. THERE ARE A LOT OF ISSUES THAT NEED TO BE LOOKED AT
6 HERE AND DEALT WITH, NOT ALL OF WHICH HAVE TO DO WITH THE
7 MERITS. SO AT THIS TIME I'M KIND OF INCLINED TO --

8 THE COURT: LET ME ASK: ASSUMING YOU'RE SET
9 FOR HEARING, HOW LONG WOULD A HEARING BE?

10 MR. JOHNSON: WELL, I THINK IT'S YOUR BASIC
11 C.E.Q.A. CASE. I DON'T THINK THE HEARING WOULD TAKE MUCH
12 LONGER THAN MOST.

13 THE COURT: HALF A DAY, EVEN LESS?

14 MR. JOHNSON: THAT WOULD BE MY ESTIMATE.

15 THE COURT: AND THEN TO GET READY FOR THAT, WHAT
16 DO WE NEED TO DO?

17 MR. JOHNSON: DEPENDS ON ONE -- A COUPLE THINGS.
18 ONE IS THE COMPLETION OF THE RECORD FOR THE SECOND PART
19 OF THE LAWSUIT, THE SECOND LAWSUIT THAT THEY BROUGHT.
20 AND THEN THE OTHER THING WOULD BE WHETHER OR NOT THE
21 PETITIONER'S PLAN ON AMENDING THEIR PETITION TO BRING
22 INTO IT THE THINGS THAT HAVE HAPPENED SINCE THIS -- SINCE
23 WE LAST MET; IN OTHER WORDS, THE ACTION THAT THE BOARD
24 TOOK YESTERDAY.

25 MR. GREEN: YOUR HONOR, MAY I SPEAK TO WHAT HAS
26 JUST HAPPENED RECENTLY?

27 THE COURT: LET ME ASK YOU ABOUT AMEND THE
28 PETITION, ALWAYS AN EXCITING PHRASE.

1 MR. GREEN: SO WE DO NOT HAVE CURRENT PLANS TO
2 AMEND THE PETITION. WE'RE JUST LOOKING AT THE ACTION
3 THAT THE OVERSIGHT BOARD TOOK YESTERDAY.

4 BUT TO SPEAK TO -- OVERALL IN RESPONSE TO YOUR
5 HONOR'S PRIMARY ISSUE, YES, WE BELIEVE THE TRIAL DATE
6 SHOULD BE SET AND SET A BRIEFING SCHEDULE NOW. WE THINK
7 IT SHOULD BE SET FOR HEARING A FEW MONTHS OUT. WE DON'T
8 THINK THERE NEEDS TO BE A LONG TIME PREPARING THE RECORD.
9 WE ALREADY HAVE THE RECORD IN THE FIRST STAND FOR SAN
10 JOSE CASE.

11 IN THE SECOND STAND FOR SAN JOSE CASE, IT REALLY
12 -- IT STARTED WHEN THE CONTROLLER ISSUED AN ORDER FOR THE
13 PROPERTY TO BE RETURNED TO THE SUCCESSOR AGENCY. THE
14 OVERSIGHT BOARD RETURNED THE PROPERTY, BUT SAID IT WAS
15 RETURNING IT SUBJECT TO THE OPTION AGREEMENT. IT'S A
16 FAIRLY SIMPLE CASE. IT RETURNED IT SUBJECT TO THE OPTION
17 AGREEMENT. WE CONTEND IT WAS ORDERED TO JUST RETURN THE
18 PROPERTY. WE DON'T THINK IT'S GOING TO TAKE VERY LONG TO
19 PREPARE THAT RECORD. WE THINK A BRIEFING SCHEDULE SHOULD
20 BE SET AND A HEARING SHOULD BE SET.

21 THE COURT: IN THE INTERIM, WHAT IF THE
22 DEPARTMENT OF FINANCE GETS REALLY EXCITED AND DOES
23 SOMETHING ABOUT THIS?

24 MR. GREEN: WHAT HAPPENED YESTERDAY AND THEN
25 WHAT'S HAPPENED OVERALL IN THE LAST SIX MONTHS -- BECAUSE
26 IT'S VERY FRUSTRATING TO US ON THE PART OF THE
27 PETITIONERS -- WHAT HAPPENED YESTERDAY IS THE OVERSIGHT
28 BOARD -- WHAT WE HAVE HEARD FOR THE LAST FOUR TO

1 SIX MONTHS IS THAT THIS ACTION SHOULD BE STAYED, BECAUSE
2 THE OVERSIGHT BOARD WAS CONSIDERING WHETHER TO LIST THE
3 DIRIDON PROPERTIES IN THE LONG-RANGE PROPERTY MANAGEMENT
4 PLAN AS SUBJECT TO THE ENFORCEABLE OBLIGATION OF THE
5 OPTION AGREEMENT. OF COURSE, WE HAVE CONTENDED THAT'S
6 NOT AN ENFORCEABLE OBLIGATION, SO IT CANNOT BE LISTED AS
7 THE ENFORCEABLE OBLIGATION IN THE L.R.P.M.P.

8 SO WHAT HAS THE OVERSIGHT BOARD FINALLY DONE
9 AFTER HAVING SEVERAL DRAFTS OF THESE PLANS ENLISTED
10 SUBJECT TO THIS ENFORCEABLE OPTION AGREEMENT AS AN
11 ENFORCEMENT OBLIGATION? FINALLY, YESTERDAY THE OVERSIGHT
12 BOARD DELETES ALL OF THAT FOR THE LONG-RANGE PROPERTY
13 MANAGEMENT PLAN AND SAYS: WE'RE JUST GOING TO KEEP THE
14 PROPERTY FOR FUTURE DEVELOPMENT. NO REFERENCE TO IT
15 BEING AN ENFORCEABLE OBLIGATION AND NO REFERENCE, IN
16 FACT, TO THE OPTION AGREEMENT ANYMORE IN THE LONG-RANGE
17 PROPERTY MANAGEMENT PLAN.

18 WE'VE BEEN WAITING FOR SIX MONTHS FOR THE
19 OVERSIGHT BOARD TO SAY WHETHER IT WAS CONSIDERING THIS TO
20 BE AN ENFORCEABLE OBLIGATION. THEY'VE NOW ESSENTIALLY
21 ELIMINATED THAT IN THE LONG-RANGE PROPERTY MANAGEMENT
22 PLAN. SO WHAT THE D.O.F. DOES -- THE D.O.F. ISN'T EVEN
23 GOING TO CONSIDER THIS ISSUE. IT'S REVIEWING A
24 LONG-RANGE PROPERTY MANAGEMENT PLAN THAT ISN'T EVEN GOING
25 TO SAY ANYTHING ABOUT THE OPTION AGREEMENT OR WHETHER
26 IT'S ENFORCEABLE.

27 IN THE CASE MANAGEMENT CONFERENCE STATEMENT THAT
28 THE CITY --

1 THE COURT: WHY COULDN'T THE DEPARTMENT OF
2 FINANCE BRING IT BACK IN?

3 MR. GREEN: FRANKLY, I DON'T KNOW WHAT THE
4 CITY'S POSITION IS ON HOW THERE IS STILL A POSSIBILITY OF
5 MOOTNESS, BECAUSE THEY HAVEN'T EXPLAINED THAT IN THEIR
6 LATEST CASE MANAGEMENT CONFERENCE STATEMENT AND I WOULD
7 BE INTERESTED IN KNOWING THE CITY'S POSITION.

8 THE COURT: RIGHT NOW THE CITY SAID: FINE.
9 IT'S OUR PROPERTY.

10 MR. GREEN: THE CITY HAS SAID: WE WILL RETAIN
11 IT FOR FUTURE DEVELOPMENT AND WE DON'T HAVE TO SAY IT'S
12 AN ENFORCEABLE OBLIGATION.

13 THE COURT: IS THAT BASICALLY WHAT HAPPENED?

14 MR. JOHNSON: YES.

15 MR. ROBINSON: WITH ONE IMPORTANT EXCEPTION.
16 THEY SAID: WE ARE RETAINING IT FOR USE AS A BASEBALL
17 STADIUM. THE DEPARTMENT OF FINANCE --

18 THE COURT: DIFFERENT THAN RAISING CORN.

19 MR. GREEN: IT'S CERTAINLY TRUE THEY ARE
20 CONTINUING TO SAY THAT THEY WANT TO USE THIS FOR
21 BASEBALL. HOWEVER, THEY ARE DUCKING THE ISSUE OF IS THE
22 OPTION AGREEMENT ENFORCEABLE.

23 THE COURT: IF THEY REALLY WANTED TO DO
24 SOMETHING, THEY COULD LIST 28 THINGS PERTAINING TO USE
25 FOR INCLUDING A BASEBALL FIELD AND WE WOULDN'T HAVE
26 ANYTHING TO TALK ABOUT.

27 MR. GREEN: IF THEY SAID THEY WERE NO LONGER
28 GOING TO USE THIS PROPERTY FOR A BASEBALL STADIUM, WE

1 COULD THEN ARGUE THERE MIGHT BE A MOOTNESS ISSUE.
2 THEY'RE SAYING THEY'RE STILL GOING TO USE THIS FOR A
3 BASEBALL STADIUM. THEY'RE NOT GOING TO SAY WHETHER THE
4 OPTION AGREEMENT --

5 THE COURT: LET'S JUST SIMPLISTICALLY SAY:
6 WE'RE KEEPING THE PROPERTY FOR FUTURE DEVELOPMENT AND,
7 OH, BY THE WAY, IT MIGHT BE A BASEBALL STADIUM.
8 WHAT HAPPENS?

9 MR. JOHNSON: GO AHEAD.

10 MR. ROBINSON: THEY'RE NOT SAYING IT MIGHT BE A
11 BASEBALL STADIUM. THEY'RE SAYING: WE'RE KEEPING IT FOR
12 A BASEBALL STADIUM. IF IT IS NOT A BASEBALL STADIUM, WE
13 WILL DISPOSE OF IT APPROPRIATELY PURSUANT TO THE
14 REDEVELOPMENT.

15 THE COURT: WHAT CAN THE DEPARTMENT OF FINANCE
16 DO? THEY'RE GOING TO GET THIS STATEMENT -- LET'S SAY,
17 ONE-SENTENCE STATEMENT. WHAT AUTHORITY DOES THE
18 DEPARTMENT OF FINANCE HAVE OR ARE THEY JUST UP OR DOWN ON
19 THE RECOMMENDATION OR CAN THEY SAY: NO, WE DO WANT TO
20 TURN IT INTO CORNFIELDS?

21 MR. JOHNSON: I BELIEVE THE DEPARTMENT OF
22 FINANCE CAN DO ANY OF THOSE THINGS. THEY CAN SAY APPROVE
23 THE LONG-RANGE PROPERTY MANAGEMENT PLAN AS IT IS. THEY
24 CAN REJECT IT. IT'S KIND OF LIKE A LINE-ITEM VETO. THEY
25 CAN SAY: WE DON'T LIKE THIS ASPECT.

26 THE COURT: CAN THEY PICK UP ON THE MISSING
27 OPTION LANGUAGE?

28 MR. JOHNSON: YOUR GUESS IS AS GOOD AS MINE.

1 THE COURT: DO THEY HAVE THE AUTHORITY TO DO
2 THAT?

3 MR. JOHNSON: I SUPPOSE THEY DO, YES. THEY
4 COULD LOOK AT THAT PIECE OF PROPERTY AND SAY: WELL, YOU
5 KNOW, WE DON'T THINK THAT'S AN APPROPRIATE METHOD OF
6 DISPOSING OF THE PROPERTY OR ATTACH CONDITIONS TO IT OR
7 WHAT HAVE YOU.

8 MR. ROBINSON: I THINK THE ISSUE FROM THE
9 DEPARTMENT OF FINANCE'S PERSPECTIVE WOULD BE HERE IS A
10 PIECE OF PROPERTY THAT HAS A CERTAIN VALUE -- FAIR MARKET
11 VALUE FOR HIGHEST AND BEST USE. YOU'RE IN EFFECT
12 DESIGNATING IT FOR BASEBALL STADIUM USE, WHICH IS
13 DEPRESSING ITS VALUE, WHICH MEANS THAT THE OTHER TAX
14 ENTITIES WILL GET LESS THAN THEY WOULD HAVE HAD YOU SOLD
15 IT ON THE OPEN MARKET, SO THERE IS CERTAINLY -- THERE
16 REMAINS A POSSIBILITY THE DEPARTMENT OF FINANCE WILL NOT
17 GO ALONG WITH THE PROPOSED USE OF THE PROPERTY.

18 THE COURT: IF THEY DON'T AND JUST SAID: NO,
19 IT'S NOT TO BE USED AS A BASEBALL STADIUM, THEN WHAT
20 HAPPENS TO THIS CASE?

21 MR. ROBINSON: WELL, THEN THE OPTION CAN ONLY BE
22 EXERCISED FOR USE AS A BASEBALL STADIUM.

23 MR. JOHNSON: THAT BRINGS UP ANOTHER POINT, YOUR
24 HONOR, WHICH YOU MAY OR MAY NOT RECALL. THIS OPTION
25 EXPIRES IN NOVEMBER.

26 THE COURT: I KNEW IT WAS SOMEWHERE COMING SOON.
27 IS IT RENEWABLE?

28 MR. JOHNSON: NO. I DON'T THINK SO. WELL, I

1 DON'T KNOW THE ANSWER TO THAT. I BELIEVE IT'S NOT.

2 MR. ROBINSON: IT'S NOT ACCORDING TO ITS TERMS.
3 OF COURSE, THE PARTIES CAN ALWAYS AGREE.

4 MR. GREEN: YOUR HONOR, JUST -- I WANT TO
5 BRIEFLY GO OVER THE OVERALL CHRONOLOGY, BECAUSE I THINK
6 IT'S VERY IMPORTANT, AND THEN I WANT TO TALK BRIEFLY
7 ABOUT WHAT'S HAPPENED IN THE LAST TWO WEEKS SINCE WE
8 FILED THE CASE MANAGEMENT CONFERENCE STATEMENT.

9 THE COURT: I CAN CUT TO THE QUICK. I CAN DO IT
10 FAR ENOUGH DOWNSTREAM SO IF SOMEBODY GETS MOVING IN THE
11 DEPARTMENT OF FINANCE, IT CAN BE DONE. IF YOU'RE SAYING
12 THREE TO SIX, I'M PROBABLY GOING TO SET THIS LATE SUMMER
13 OR EARLY FALL.

14 MR. JOHNSON: FINE.

15 MR. GREEN: YOUR HONOR, THE CITY'S STRATEGY ALL
16 ALONG HAS BEEN TO PREVENT ANY CONSIDERATION OF THE MERITS
17 OF WHETHER THIS OPTION AGREEMENT WAS AN ENFORCEABLE
18 AGREEMENT.

19 THE COURT: BUT YOU'RE GOING TO ASK ME TO DECIDE
20 THAT.

21 MR. GREEN: WE ARE. WE THINK THE ULTIMATE
22 DECISION SHOULDN'T BE SIMPLY PUSHED UNTIL THE OPTION
23 AGREEMENT IS ON THE VERGE OF EXPIRATION. THIS IS REALLY
24 SIGNIFICANT. IN THE LAST TWO WEEKS THE CITY HAS FILED A
25 NINTH CIRCUIT APPEAL ON THE ANTITRUST ISSUE. THEY'VE NOW
26 FILED A MOTION TO EXPEDITE AND FILED A REPLY BRIEF TWO
27 DAYS AGO. IN THEIR REPLY BRIEF, THEY SAY THIS HAS TO BE
28 EXPEDITED, BECAUSE WE HAVE A VALID OPTION AGREEMENT AND

1 IT'S GOING TO EXPIRE IN NOVEMBER AND WE NEED THE COURT TO
2 DECIDE THIS ISSUE BEFORE NOVEMBER.

3 THEY'VE NOW FILED A NEW LAWSUIT IN SANTA CRUZ
4 COUNTY FOR INTERFERENCE WITH THE OPTION AGREEMENT, OF
5 COURSE, BASED ON IT BEING A VALID OPTION AGREEMENT AND
6 THEY'RE GOING TO SEEK DISCOVERY AND EXPEDITE IT. THEY
7 HAVEN'T FILED NOTICE OF RELATED CASE THAT WE'RE AWARE
8 WHEN WE SAW THE MOTION TO EXPEDITE, WHICH, OF COURSE,
9 RAISES THE ISSUE OF THE VALIDITY OF THE OPTION AGREEMENT.

10 THIS COURT -- ON THE ONE HAND, THEY'RE SEEKING
11 TO EXPEDITE THEIR OWN LAWSUIT AGAINST MAJOR LEAGUE
12 BASEBALL IN THREE DIFFERENT FORMS IN THREE DIFFERENT
13 COURTS. AND THEN IN THIS COURT THEY'RE SAYING: NO, WE
14 HAVE TO WAIT FOR ADMINISTRATIVE ACTION. YOU CAN'T
15 CONSIDER THE MERITS OF THIS OPTION AGREEMENT. YOU SHOULD
16 PUSH IT AS LONG AS WE POSSIBLY CAN WHILE WE -- OF COURSE,
17 THEY DON'T SAY THIS -- WHILE WE LITIGATE OUR CLAIMS
18 AGAINST MAJOR LEAGUE BASEBALL THAT ARE BASED ON A VALID
19 OPTION AGREEMENT AND WHILE WE EXPEDITE THEM, BECAUSE ALL
20 OF THOSE CLAIMS HAVE TO BE HEARD BEFORE NOVEMBER 2014.

21 THIS IS AN INCONSISTENT POSITION AND THEY CAN'T
22 HAVE IT BOTH WAYS. YOUR HONOR, IT IS IMPORTANT FOR THIS
23 COURT TO DECIDE, BECAUSE THE ISSUE OF THE VALIDITY OF
24 THIS OPTION AGREEMENT IS SQUARELY IN FRONT OF THIS COURT,
25 MORE THAN ANY OTHER COURT, AND IT'S BEEN HERE SINCE MORE
26 THAN TWO YEARS. IT IS, IN OUR VIEW, VERY IMPORTANT FOR
27 THIS COURT TO HEAR THE PETITIONER'S ARGUMENT OF WHY THIS
28 OPTION AGREEMENT IS NOT VALID, BECAUSE THE OTHER COURTS

1 WILL BE LOOKING AS WELL.

2 THE COURT: AS I SAID, I'M PREPARED TO SET IT.
3 I JUST AM NOT GOING TO PUT IT ON A SHORT TETHER. YOU
4 JUST DON'T AGREE WITH MY TIMING?

5 THIS HAS THE POSSIBILITY OF FOUR DIFFERENT
6 OPINIONS. THIS IS A BEAUTIFUL THING IN THE COURTS.

7 I'M PREPARED TO SET IT. I'M JUST NOT GOING TO
8 SET IT ON A SHORT TETHER. THAT'S CONSISTENT WITH WHAT I
9 THINK I SHOULD DO AND OTHER THINGS I NEED TO SET.

10 ALL RIGHT. HOW ABOUT JULY 25?

11 MR. ROBINSON: THAT MAY NOT GIVE US ENOUGH TIME.

12 THE COURT: SIX MONTHS?

13 MR. JOHNSON: I HAVE TWO TRIALS IN JUNE, ONE
14 JUNE 16 AND THE OTHER JUNE 30, WHICH IMPACTS MY ABILITY
15 TO WORK ON THE BRIEF, WHICH IS REALLY MORE OF A
16 CONSIDERATION THAN THE ACTUAL HEARING DATE, YOUR HONOR.
17 IF WE COULD GO OUT ANOTHER 30 DAYS, THAT WOULD BE
18 EXTREMELY HELPFUL TO ME.

19 THE COURT: I DON'T WANT TO GO TOO FAR. I WILL
20 GO TO THE 8TH OF AUGUST AND I WILL LEAVE YOU ALL TO AGREE
21 TO THE BRIEFING SCHEDULE. PUT IT IN THE FORM OF AN
22 ORDER.

23 MR. JOHNSON: THAT WOULD BE HELPFUL.

24 THE COURT: AUGUST 8, NINE O'CLOCK, HEARING ON
25 THE WRIT.

26 MR. ROBINSON: HOW MUCH TIME DO YOU THINK YOU
27 WILL NEED BETWEEN THE TIME OF THE FILING OF THE LAST
28 BRIEF?

1 THE COURT: THE MORE TIME I HAVE THE BETTER. I
2 HAVE A NUMBER OF, BELIEVE IT OR NOT, JURY TRIALS ALREADY
3 SET, BECAUSE THERE'S A SERIES OF MONEY CLUB CASES I HAVE
4 ALREADY SET. I HAVE TRIALS ALREADY SET IN JULY AND
5 AUGUST. I WOULD PREFER TO HAVE EVERYTHING IN HAND
6 PROBABLY ABOUT THREE WEEKS AHEAD OF TIME OR SO.
7 CERTAINLY, THE EARLIER THE FILING ON THE OPENING BRIEFS,
8 THE BETTER. IF I HAVE OPENINGS EARLY ON, I CAN LOOK THEM
9 OVER ON THE WEEKEND.

10 SET IT FOR AUGUST 8TH AND YOU ALL TALK ABOUT
11 BRIEFING SCHEDULE, ADMIN RECORDS, WHATEVER YOU NEED TO
12 DO, AND PUT IT IN AN ORDER.

13 MR. GREEN: SURE.

14 MR. ROBINSON: IS THERE A TIME, YOUR HONOR?
15 AUGUST 8TH AT?

16 THE COURT: 9:00. THERE'S NOTHING SET ON THE
17 FRIDAY CALENDAR.

18 MR. JOHNSON: THANK YOU, YOUR HONOR.

19 THE COURT: I'LL PROBABLY JUST HOLD THAT FOR
20 THIS MATTER.

21 MR. GREEN: THANK YOU, YOUR HONOR.

22 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)
23
24
25
26
27
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

3
4 I, CATHY L. JAMELLO, DO HEREBY CERTIFY: THAT I
5 WAS APPOINTED BY THE COURT TO ACT AS COURT REPORTER IN
6 THE ABOVE-ENTITLED ACTION; THAT I REPORTED THE SAME IN
7 STENOTYPE AND THEREAFTER TRANSCRIBED THE SAME INTO
8 TYPEWRITING AS APPEARS BY THE FOREGOING TRANSCRIPTION;
9 THAT SAID TRANSCRIPT IS A FULL, TRUE, AND CORRECT
10 STATEMENT OF THE PROCEEDINGS, TO THE BEST OF MY ABILITY.

11 I FURTHER CERTIFY THAT I HAVE COMPLIED WITH
12 CCP 237(A)(2) IN THAT ALL PERSONAL JUROR IDENTIFYING
13 INFORMATION HAS BEEN REDACTED IF APPLICABLE.

14
15 DATED THIS 28TH DAY OF FEBRUARY, 2014.

16
17
18
19 CATHY JAMELLO
20 OFFICIAL COURT REPORTER
21 C.S.R. NO. 5653

22 ATTENTION: CALIFORNIA GOVERNMENT CODE
23 SECTION 69954(D) STATES:

24 "ANY COURT, PARTY OR PERSON WHO HAS PURCHASED
25 A TRANSCRIPT MAY, WITHOUT PAYING A FURTHER FEE TO THE
26 REPORTER, REPRODUCE A COPY OF PORTION THEREOF AS AN
27 EXHIBIT PURSUANT TO COURT ORDER OR RULE, OR FOR INTERNAL
28 USE, BUT SHALL NOT OTHERWISE PROVIDE OR SELL A COPY OR
COPIES TO ANY OTHER PARTY OR PERSON."

---OOO---

Exhibit 2

No. 14-15139

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CITY OF SAN JOSÉ; CITY OF SAN JOSÉ AS SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSÉ; and
THE SAN DIRIDON DEVELOPMENT AUTHORITY,**

Plaintiffs and Appellants,

v.

**OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated
association dba Major League Baseball; and ALLAN HUBER "BUD" SELIG,**

Defendants and Appellees.

On Appeal from the United States District Court
Northern District of California

Case No. 13-CV-02787-RMW, Honorable Ronald M. Whyte, Judge

**REPLY IN SUPPORT OF MOTION TO TAKE JUDICIAL
NOTICE**

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I. REPLY IN SUPPORT OF MOTION TO TAKE JUDICIAL NOTICE

MLB seeks judicial notice of facts that can be accurately and readily determined from sources whose accuracy cannot be questioned. *See, generally*, Dkt. 23-1 (Motion to Take Judicial Notice or “MTJN”). San José **does not dispute** the facts that MLB seeks to judicially notice. Instead, San José opposes MLB’s motion with a grab-bag of misplaced objections. As explained below, MLB identifies with particularity the facts subject to judicial notice—the trial date and legal grounds for the petitioner’s claims in the *Stand for San José* litigation, and the district court’s decision in *Hale* (as documented in the transcript of the court’s oral opinion). These facts are directly relevant to two core issues on appeal—San José’s antitrust standing and the scope of MLB’s antitrust exemption. And contrary to San José’s assertions, MLB does not seek to use any of these facts for improper purposes. Judicial notice of the facts is therefore appropriate.¹

¹ San José’s Reply Brief also asks the Court to strike portions of MLB’s Answering Brief that reference certain other facts. Dkt. 27 n.1. Primarily, San José objects to MLB’s reference to (1) documents that were attached to San José’s initial complaint (*e.g.* I ER 253), or (2) documents that were judicially noticed by the District Court (*e.g.* I ER 173 n.21). Of course, documents that San José attached to its complaint are **not** outside the complaint for purposes of a Motion to Dismiss. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1989). And documents noticed by the District Court below are properly part of the record. I ER (D. Ct. Opinion) at 13–14. San José has forfeited any objection to those documents by failing to appeal the District Court’s decision to take judicial notice. Additionally, San José objects to MLB’s reference to the fact that MLB has denied the Athletics’ relocation request. This fact was properly

II. DISCUSSION

A. MLB's motion for judicial notice states with particularity the facts at issue.

Contrary to San José's assertion, MLB states with particularity the facts for which it seeks judicial notice. MLB requests that the Court take judicial notice of the following specific facts:

- The August 8, 2014 trial date in the consolidated *Stand for San José* matters. Dkt 23-1 (MTJN), Ex. 1 at 1:9–10.
- The four grounds raised in the *Stand for San José* action for invalidating San José's Option Agreement with the Oakland Athletics. Dkt 23-1 (MTJN), Ex. 2 at ¶ 1.
- The *Hale* court's holding that "radio broadcasting and telecasting of baseball games" are within the scope of the "ordinary business of baseball" for purposes of MLB's exemption from antitrust laws. Dkt 23-1 (MTJN), Ex. 3 at 2–4.

Dkt 23-1 (MTJN) at 1–2. San José falsely asserts that MLB's motion violates Federal Rule of Appellate Procedure 27(a)(2)(A), but ignores the numerous places

put before the District Court in a Supplemental Joint Case Management Statement (II ER 6:12–14), and San José has included this fact in a recently filed state-court complaint. *See* Ex. A (Los Angeles Sup. Ct. Complaint) at ¶ 11.

in MLB's motion where the facts at issue are specifically identified. *See* Dkt. 23-1 (MTJN) at 1–2, 3–4. San José's procedural objections therefore lack merit.²

B. The facts at issue may be accurately and readily determined from sources whose accuracy cannot be questioned.

The parties agree that a fact is properly subject to judicial notice if it “can be accurately and readily determined from sources whose accuracy cannot be questioned.” Fed. R. Evid. 201(b)(2). Notably, San José **does not dispute** the facts at issue, or the accuracy of the sources from which they are drawn. San José tacitly acknowledges that the consolidated *Stand for San José* trial is scheduled to begin on August 8, that the petitioner in those actions is advancing the four listed grounds for invalidating the Option Agreement, and that the *Hale* transcript states that court's ruling regarding the scope of the antitrust exemption. Dkt. 26 (Opp. to MTJN) at 4–9.

Because San José cannot dispute these facts or the accuracy of their sources, it claims that MLB is requesting that the Court use them in impermissible ways. Dkt. 26 (Opp. to MTJN) at 5, 8–9. Not so. With regard to the *Stand for San José* scheduling order and Amended Complaint, MLB's motion asks only that the Court

² San José argues that the Court should not take judicial notice due to an Advisory Committee note suggesting that parties seek each other's positions before filing a Motion to Take Judicial Notice. Dkt. 26 (Opp. to MTJN) at 3. But San José cannot claim any prejudice—its position has been fully presented to this Court. And San José provides no authority for relying on this Advisory Committee note to deny a meritorious motion.

take notice of their content, not any “interpretation” of their content. *Id.* at 5. For the *Hale* transcript, MLB seeks judicial notice of only what the court held—not any argumentative analysis of its reasoning or determination regarding underlying facts. Courts routinely take notice of such decisions, as recognized by Federal Rule of Appellate Procedure 32.1(b), which instructs parties to submit copies of opinions, orders, judgments or dispositions unavailable on electronic databases.³

C. Judicial notice of the facts at issue is otherwise proper.

1. The *Stand for San José* claims and trial date have a direct relation to this action.

San José argues that “resolution of the validity of the Option Agreement” is “clearly irrelevant” to this appeal (Dkt. 26 (Opp. to MTJN) at 5), but concedes in its Reply Brief that the Option Agreement is the basis for its purported standing to bring antitrust claims: “San José has standing because it has suffered (and continues to suffer) antitrust injury. As the Complaint specifically alleges: But for MLB’s antitrust violations, the A’s would have **exercised the option** and entered into a Purchase and Sale Agreement with the City of San José.” Dkt. 27 (SJ Reply Br.) at 3 (emphasis added). In fact, San José based its Motion to Expedite this appeal entirely on the fact that San José’s claims may be mooted when the Option

³ Under Federal Rule of Appellate Procedure 32.1(b), the Court may not need to take judicial notice of the *Hale* transcript to rely on it. MLB sought judicial notice of the transcript out of an abundance of caution because a “transcript” is not one of the specific categories of judicial documents discussed by the Rule.

Agreement expires in November 2014. Dkt. 2-1 (SJ Mot. to Expedite) at 8--9; Dkt. 15-1 (SJ Reply iso Mot. to Expedite) at 2 (“The expiration of the Option Agreement provides good cause to expedite this appeal”). Because San José’s antitrust standing is a dispositive issue in this case, related proceedings that could destroy San José’s purported standing are relevant. The *Stand for San José* trial date and grounds for invalidating the Option Agreement thus are facts with a “direct relation to matters at issue here.”⁴ *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).⁵

2. The *Hale* transcript is a relevant judicial decision, not “external evidence.”

San José’s arguments against judicial notice of the *Hale* transcript fundamentally misconstrue the nature of MLB’s request. The *Hale* transcript is not “external” or “substantive” evidence. *See* Dkt. 26 (Opp. to MTJN) at 7--8. Nor does MLB request that the Court admit factual findings in *Hale* for their truth in this action. *Id.* at 8. Rather, the transcript is a record of a district court decision

⁴ MLB could not have presented these facts to the District Court because the *Stand for San José* trial date was not set and the complaint not yet amended when MLB filed its motion to dismiss and related papers.

⁵ San José’s attempt to distinguish *Robinson Rancheria* fails. Dkt. 26 (Opp. to MTJN) at 6. The Ninth Circuit does not require complete identity of the parties or claims at issue before a court may take judicial notice of other proceedings. *Robinson Rancheria*, 971 F.2d at 248. The *Stand for San José* action, like the other action in *Robinson Rancheria*, is “directly related” to this case because it “may in fact be dispositive.” *Id.*

regarding a legal issue at the core of San José's appeal—the scope of MLB's antitrust exemption. *See, e.g.*, Dkt. 22 (MLB Answering Br.) at 39–57. MLB requests that the Court take judicial notice of the *Hale* court's holding, in the same way the Court would recognize any other legal decision not available in electronic databases or other easily accessible sources. San José raises no objections to judicial notice of the transcript for this limited purpose.

III. CONCLUSION

For these reasons, the Court should grant this motion to take judicial notice.

KEKER & VAN NEST LLP

DATED: April 28, 2014

/s John W. Keker

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association doing business as Major
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HUBER "BUD" SELIG

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ John W. Kecker

John W. Kecker

Exhibit A

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as successor agency to the Redevelopment Agency of the City of
San José; and the San José Diridon Development Authority*

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

**CITY OF SAN JOSÉ; CITY OF SAN
JOSÉ AS SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF
THE CITY OF SAN JOSÉ; and THE SAN
JOSÉ DIRIDON DEVELOPMENT
AUTHORITY,**

Plaintiffs,

v.

**OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association
doing business as Major League Baseball;
ALLAN HUBER "BUD" SELIG, and
DOES 1 through 50,**

Defendants.

Case No. BC538932

COMPLAINT:

1. **TORTIOUS INTERFERENCE
WITH PROSPECTIVE
ECONOMIC ADVANTAGE;**

AND

2. **TORTIOUS INTERFERENCE
WITH CONTRACTUAL
ADVANTAGE**

JURY TRIAL DEMANDED

BY FAX

FILED
Superior Court of California
County of Los Angeles

MAR 10 2014

Sherri R. Carter, Executive Officer/Clerk
By Myrna Beltran Deputy
Myrna Beltran

D-73-RAFAEL ONGKEKO

03/10/2014

RECEIPT #: CH289197096
DATE PAID: 03/10/14 04:25 PM
PAYMENT: \$435.00
RECEIVED:
CHECK: \$435.00
CASH: \$0.00
CREDIT: \$0.00
TOTAL: \$435.00

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03/10/2014

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03/10/2014

1 Plaintiffs City of San José, City of San José as successor agency to the Redevelopment
2 Agency of the City of San José, and the San José Diridon Development Authority (collectively
3 "Plaintiffs") allege as follows:

4 **I. INTRODUCTION**

5 1. This action arises from the concerted efforts by Major League Baseball to prevent
6 the Athletics Baseball Club from moving from Oakland to San José. For over two years, Major
7 League Baseball has interfered with the exercise of an Option Agreement between Plaintiffs
8 and the Athletics Baseball Club by refusing to permit the Athletics to move to San José.

9 2. Baseball occupies a coveted place in American culture. It is a uniquely American
10 sport, originating before the American Civil War as a humble game played on sandlots. In
11 1871, the first professional baseball league was born. Eventually the teams were divided into
12 two leagues, the National and American – these are the two leagues that persist today.

13 3. Today there are 30 separate Major League Baseball Clubs in the United States
14 and Canada, all of which compete against each other on the baseball field in regularly
15 scheduled games. Baseball is big business in the United States with combined 2013 annual
16 revenues of over **\$8 billion**.

17 4. However there is a dark side to this storied institution – Major League Baseball
18 prohibits franchise movements "except in the most dire circumstances where the local
19 community has, over a sustained period, demonstrated that it cannot or will not support a
20 franchise." According to the Major League Baseball Constitution, three quarters of the teams
21 in a league must vote in favor of proposed team relocation or the relocation will be prohibited,
22 thus denying other cities or counties from competition for teams. The MLB Clubs, like other
23 sports leagues, have structured their governance to permit major decisions regarding on-field
24 sporting competition and off-field business competition to be made by the club owners
25 themselves.

26 5. At issue in this case is MLB's interference with the move by the Athletics
27 Baseball Club from Oakland to San José, California. San José has entered into an option
28 agreement with the Athletics Investment Group, LLC, the California limited partnership that

owns and operates the Oakland A's. By refusing to allow the Oakland A's to locate to the City of San José, Defendants are interfering with this contract.

6. Plaintiffs have suffered and continue to suffer damages in the millions of dollars due to Defendants' unreasonable interference with Plaintiffs' Option Agreement with the Athletics Baseball Club.¹

7. Major League Baseball is interfering with Plaintiffs' Option Agreement with the Athletics Baseball Club through preventing the Athletics Baseball Club from exercising the Option Agreement with the City of San José.

8. Major League Baseball is made up of competitive member teams who provide major league professional baseball games in North America. Article VIII of the MLB Constitution requires the vote of three-fourths of the Clubs to approve the relocation of a competitive team within that Club's "operating territory."

9. In 1990, when the San Francisco Giants were considering selling the team and moving to Florida, Bob Lurie, the then-owner of the Giants, expressed interest in moving to San José. To accommodate the Giants, Walter Haas, the Athletics then-owner, gave his consent for the Giants to relocate to San José for no consideration paid to the Athletics. As a result, the MLB Constitution was amended to provide that the Giants hold territorial rights to the County of Santa Clara, which includes the **City of San José**. The Giants twice were unsuccessful in their attempt to obtain a publicly-funded stadium in the South Bay Area and, although the Giants did not move, the Giants continued to claim the territorial rights to the County of Santa Clara.

10. The City of San José has one of the fastest growing populations in the Bay Area and is home to dozens of large technology companies. It is also easy to understand why the Athletics wish to move to the City of San José. Unlike San Francisco County, Santa Clara County is immediately contiguous to Alameda County. Moreover the Athletics are an

¹Plaintiffs are not seeking damages from the Athletics Baseball Club. It is the Defendants, including MLB, who have acted to prevent the Athletics Baseball Club from relocating to San José. Further, the Athletics Baseball Club cannot interfere with the Option Agreement to which it is a party.

1 economically disadvantaged team in an aging stadium in Alameda County which the Athletics
2 must share with the Oakland Raiders (the only such arrangement in baseball), and are heavily
3 dependent on revenue sharing from their more well-heeled colleagues.

4 11. Defendants assert that in a letter dated June 17, 2013 from Commission Selig to
5 Lewis Wolff (managing partner of the Athletics), Defendants denied the relocation request of
6 the Athletics. However, this purported denial was done secretly and Defendants refuse to
7 release the contents of the June 17, 2013 letter to Plaintiffs or the public.

8 12. This purported denial of the Athletics' relocation request did not inhibit the
9 Athletics from extending the Option Agreement. On September 26, 2013, the Athletics
10 Investment Group LLC elected to extend the Option Agreement's exercise period through
11 November 8, 2014 by paying the extension fee of \$25,000.

12 13. Through MLB's exercise of the exclusionary provisions in the MLB
13 Constitution, members of MLB interfered with Plaintiffs' Option Agreement with the Athletics
14 Baseball Club in violation of the laws of the State of California by refusing to allow the
15 Athletics Baseball Club to relocate to the City of San José.

16 **II. PARTIES**

17 **A. PLAINTIFFS**

18 14. Plaintiff **CITY OF SAN JOSÉ** is, and at all times mentioned herein was, a
19 California municipal corporation, organized as a Charter City under the California Constitution
20 and the laws of the State of California. Plaintiff City of San José is located in the County of
21 Santa Clara. Plaintiff City of San José has the capacity to sue pursuant to, *inter alia*, California
22 Government Code section 945 and brings this action individually and on behalf of the People
23 of the City of San José.

24 15. Although the Redevelopment Agency of the City of San José (the "Agency") has
25 been dissolved, Plaintiff City of San José is suing in its capacity as the **Successor Agency to**
26 **the Redevelopment Agency of the City of San José**. Plaintiff City of San José has the
27 capacity to sue pursuant to, *inter alia*, California Government Code section 945, and brings this
28 action individually and on behalf of the People of the City of San José.

1 16. Plaintiff **SAN JOSÉ DIRIDON DEVELOPMENT AUTHORITY** is a joint
2 powers association comprised of the City of San José and the former Redevelopment Agency.
3 The San José Diridon Development Authority was formed on March 8, 2011, when the City of
4 San José and the then-Redevelopment Agency of the City of San José formed a joint powers
5 authority under the Joint Exercise of Powers Act to facilitate the development and
6 redevelopment of the Diridon Area, which is the area within the City of San José bounded on
7 the North by the northerly line of the Julian Street right of way, bounded on the East by Los
8 Gatos Creek, bounded on the South by the southerly line of the Park Avenue right of way, and
9 bounded on the West by the westerly line of the railroad right of way adjacent to the Diridon
10 Station.

11 **B. DEFENDANTS**

12 17. Defendant **THE OFFICE OF THE COMMISSIONER OF BASEBALL d/b/a**
13 **MAJOR LEAGUE BASEBALL** ("MLB") is an unincorporated association whose members
14 are the thirty Major League Baseball Clubs. MLB is the most significant provider of major
15 league professional baseball games in the world. MLB, on behalf of its members, has
16 responsibility for administrative and operational matters relating to Major League Baseball.
17 MLB headquarters are located at 245 Park Avenue, New York, New York.

18 18. Defendant **ALLAN HUBER "BUD" SELIG** ("Selig") is the Commissioner of
19 Major League Baseball, having served in that capacity since 1992, first as acting commissioner,
20 and as the official commissioner since 1998. Upon information and belief, Commissioner
21 Selig is a resident of Milwaukee, Wisconsin.

22 19. Defendant **THE OFFICE OF THE COMMISSIONER OF BASEBALL**
23 **("OCB")** is an office created pursuant to the Major League Agreement entered into by the
24 National and American Leagues and the member Clubs of Major League Baseball then in
25 existence. Upon information and belief, the OCB has the power to act for and bind MLB in
26 business matters centralized in the League.

27 20. Through the MLB Constitution and the rules adopted and promulgated by MLB
28 and its Commissioner, Defendant Bud Selig, MLB and the Clubs have adopted agreements

governing all aspects of major league professional baseball. The MLB Constitution was adopted by votes of the Clubs and may be amended by votes of the Clubs in accordance with its terms.

21. Each Club that is a member of MLB is a separate and independent business with a separate and independent owner, exercising significant autonomy in its business operations. While the Clubs cooperate to schedule and produce major league men's professional baseball games and facilitate competition on the field, the Clubs compete off the field in the sale of tickets, sponsorships, merchandise, and concessions. The Clubs also compete in the developing, licensing, and marketing of their respective trademarks for various purposes. The Clubs set their own prices for the sale of tickets for attending games at their stadiums.

22. Defendants Does 1-50 are fictitious names for individuals or entities that may be responsible for the wrongful conduct and labor practices that caused harm to Plaintiffs and each of them. The true names and capacities of Defendants Does 1-50 are unknown to Plaintiffs, but Plaintiffs will amend this Complaint when and if the true names of said Defendants become known to them.

23. At all times herein mentioned, each of the Defendants was the agent, servant, employee, partner, aider and abettor, co-conspirator, and/or joint venturer of each of the remaining Defendants named herein and were at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy, alter ego, and/or joint venture. Each Defendant has rendered substantial assistance and encouragement to the other Defendants, knowing that their conduct was wrongful and/or unlawful, and each Defendant has ratified and approved the acts of each of the remaining Defendants.

24. Each Defendant participated, as a member of the conspiracy, and acted with or in furtherance of said conspiracy, or aided or assisted in carrying out the purposes of the conspiracy, and have performed acts and made statements in furtherance of the conspiracy and other violations of California law. Each Defendant acted both individually and in alignment with other Defendants with full knowledge of their respective wrongful conduct. As such, Defendants conspired together, and with other unnamed co-conspirators, building upon each

1 other's wrongdoing, in order to accomplish the acts outlined in this Complaint. Defendants are
2 individually sued as principals, participants, and aiders and abettors in the wrongful conduct
3 complained of, the liability of each arises from the fact that each has engaged in all or part of
4 the improper acts, plans, schemes, conspiracies, or transactions complained of herein.

5 **III. JURISDICTION AND VENUE**

6 **A. JURISDICTION**

7 25. This Court has jurisdiction over this action pursuant to California Code of Civil
8 Procedure Section 71 by virtue of the fact that the complained-of acts and practices giving rise
9 to this action took place, in whole or in part, in the State of California. Moreover, Defendants
10 have done and continues to do significant business in California so as to render the exercise of
11 jurisdiction over each of them by the California courts consistent with traditional notions of fair
12 play and substantial justice. The amount in controversy exceeds the minimum jurisdictional
13 amount of unlimited civil cases.

14 **B. VENUE**

15 26. Venue is proper in this County because MLB is an unincorporated association
16 and two of its members (the Los Angeles Dodgers and the Los Angeles Angels of Anaheim)
17 reside in Los Angeles County.

18 **IV. FACTUAL BACKGROUND**

19 **A. RELEVANT HISTORY OF THE ATHLETICS**

20 27. The Athletics are a Major League Baseball Club based in Oakland, CA. The
21 Athletics are popularly known as the "A's" and are a member of the Western Division of
22 MLB's American League.

23 28. One of the American League's eight charter franchises, the Athletics Club was
24 founded in Philadelphia, PA, in 1901 as the Philadelphia Athletics. The Athletics Club had
25 notable success in Philadelphia, winning three of four World Series from 1910 to 1913 and two
26 in a row in 1929 and 1930. However, after declining success, the team left Philadelphia for
27 Kansas City, MO in 1955 and became the Kansas City Athletics.
28

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1 29. The Athletics moved to Oakland in 1968. In the early 1970's, the team enjoyed
2 tremendous success, winning three World Championships in a row from 1972 to 1974. In
3 1980, Walter Haas purchased the Athletics and spearheaded a decade of success, both in the
4 win column and in stadium attendance. The Athletics won the American League Pennant in
5 1988, 1989, and 1990 and won the World Series in 1989. More recently, the Athletics have
6 often been playoff contenders (most recently in 2013) but have not returned to the World Series
7 since 1990.

8 30. The Oakland Athletics are one of the most economically disadvantaged teams in
9 major league professional baseball. The Oakland Athletics are heavily dependent on revenue
10 sharing from more well-heeled colleagues. Because of the economic structure of baseball,
11 which does not split team revenues as evenly as other sports, there is wide disparity between
12 rich and poor teams and the Athletics are a poor team in terms of revenues.

13 31. The Oakland Athletics are housed in an old stadium, named O.co Coliseum, but
14 also known as Oakland-Alameda County Coliseum, and commonly known as Oakland
15 Coliseum or The Coliseum (the "Oakland Coliseum"). The Oakland Coliseum is the only
16 remaining multi-purpose stadium in the United States which serves as a full-time home to both
17 a Major League Baseball Club (the A's) and a National Football League team (the Raiders),
18 where the two teams play games on the same field.

19 32. Since the 1990's, attendance at A's games has plummeted. Average attendance at
20 A's home games is in the lower third of the MLB Clubs. Comparing attendance to the Giants,
21 the A's average about half the number of fans in attendance. The following chart shows the
22 numbers:
23
24
25
26
27
28

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2013 Attendance			
San Francisco 80 Home Games	3,326,796	41,584 average	Ranks 3/30
Oakland 81 Home Games	1,809,302	22,337 average	Ranks 23/30
2012 Attendance			
San Francisco	3,337,371	41,695 average	4/30
Oakland	1,679,013	20,728 average	27/30

33. The Oakland Coliseum is also the only major league park that hosts another team in another sport and is the fifth-oldest ballpark in the majors. According to the 2010 census, the Giants' territory includes 4.2 million people; the A's territory 2.6 million.

34. Spokespeople for the Athletics have repeatedly stated the Athletics have exhausted their options in Oakland after years of trying to increase attendance.

B. RELEVANT HISTORY OF THE CROSS BAY RIVAL – THE GIANTS

35. The San Francisco Giants are a Major League Baseball Club based in San Francisco, California, playing in the National League West Division. The Gothams, as the Giants were originally known, entered the National League in 1883. Later the Club was known as the New York Giants. The team was renamed the San Francisco Giants when the team moved to San Francisco in 1958.

36. Since arriving in San Francisco, the Giants have won five National League Pennants, the 2010 World Series, and the 2012 World Series.

37. The Giants have won the most games of any team in the history of American baseball. They have won twenty-two National League pennants and appeared in nineteen World Series competitions – both records in the National League. The Giants have won seven World Series Championships, ranking second in the National League (the St. Louis Cardinals have won eleven).

1 38. The current home of the Giants is AT&T Park, located at the edge of downtown
2 San Francisco and the San Francisco Bay. AT&T Park is widely-acclaimed as one of the best
3 ballparks in the league with its state-of-the-art design and breathtaking views.

4 39. However, before moving to AT&T Park in 2000, the Giants played their home
5 games in Candlestick Park (from 1960 -- 2000).

6 **C. THE TERRITORIAL DISPUTE BETWEEN THE A's AND GIANTS**

7 40. The instant territorial dispute between the A's and Giants traces its roots to the
8 1980s -- and arises out of an effort by the A's to help its fellow Bay Area team in a time of
9 need.

10 41. In the late 1980's, the Giants were hoping to build a stadium in the South Bay
11 Area and requested that MLB approve expansion of their territory into Santa Clara and
12 Monterey Counties. In 1981, Giants then-owner Bob Lurie declared Candlestick Park "unfit
13 for baseball," and began a failed campaign for a new ballpark in San Francisco.

14 42. In 1987 and 1989, respectively, the Giants sponsored ballot measures to build a
15 new ballpark in San Francisco. The San Francisco voters rejected both measures. After
16 considering new stadium sites on the Peninsula and in the South Bay, the Giants sponsored a
17 ballot measure to build a new stadium in Santa Clara. The Santa Clara voters summarily
18 rejected that measure.

19 43. In 1990, in what was viewed as a final effort to keep the Giants in the Bay Area,
20 Giants owner Bob Lurie pursued a new stadium in San José. However, the Giants faced
21 territorial restrictions under MLB's Constitution, which expressly limited the Giants to San
22 Francisco and San Mateo Counties. Faced with this definitive hurdle, Mr. Lurie reached out to
23 then-A's owner Walter Haas. Over a handshake and without consideration, Mr. Haas
24 consented to the Giants' relocation to San José. Mr. Haas never granted the Giants an
25 exclusive right to Santa Clara County, only his consent to pursue relocation of the Club to
26 Santa Clara County in 1990. On June 14, 1990, MLB unanimously approved this expansion of
27 the Giants' territory.
28

1 44. Commenting on this gentlemen's agreement, Commissioner Selig said, "Walter
2 Haas, the wonderful owner of the Oakland club, who did things in the best interest of baseball,
3 granted permission . . . What got lost there is they didn't feel it was permission in perpetuity."
4 Indeed, the MLB recorded minutes reflect that the San Francisco Giants were granted the Santa
5 Clara County operating territory subject to their relocating to Santa Clara. See March 7, 2012
6 Oakland Athletics media release. Ultimately, like the voters in San Francisco and Santa Clara
7 before them, the San José voters summarily rejected the Giants' ballot measure to relocate the
8 team to San José.

9 45. San José voters rejected the proposal of the Giants for a taxpayer-funded stadium
10 both in 1990 and again in 1992. After rejection by the voters in San José, the Giants
11 abandoned any interest in relocating to San José, and set their sights on selling the Club and
12 moving to Tampa Bay, Florida. In 1992, after reaching a deal to relocate to Tampa Bay, by a 9
13 – 4 vote, Major League Baseball rejected the deal to move to Florida and the Giants remained
14 in San Francisco.

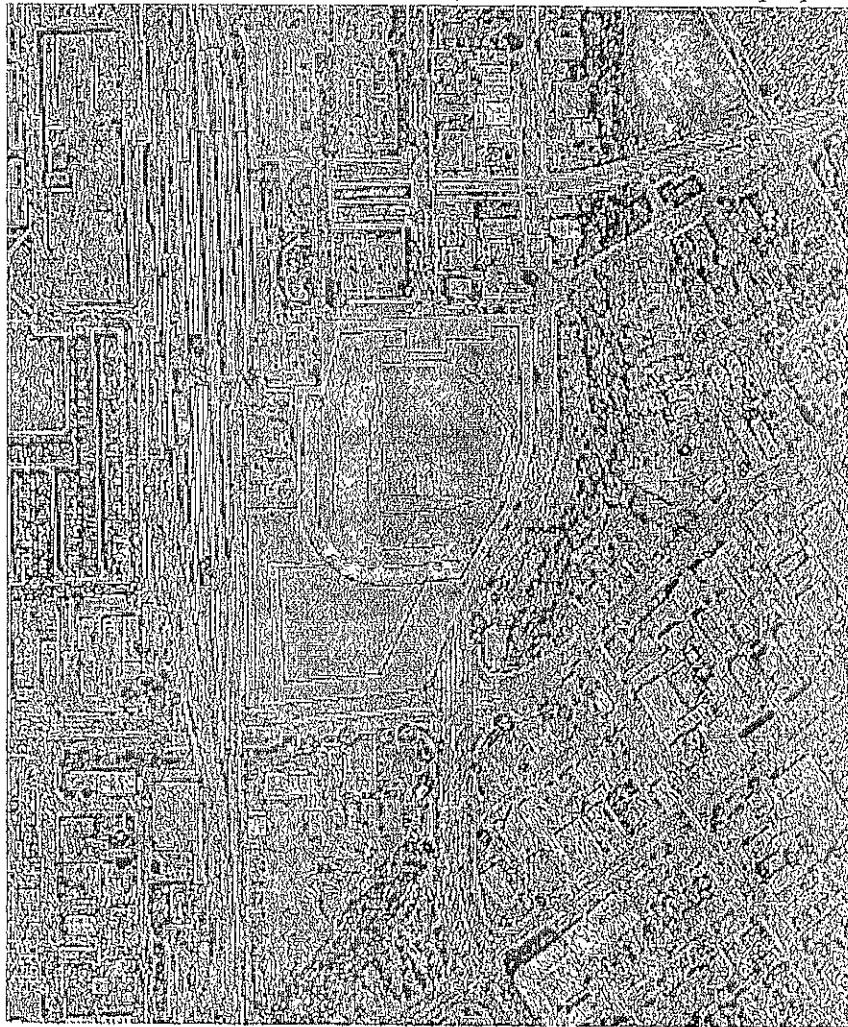
15 46. The Giants were unable to successfully obtain a vote to move into the County of
16 Santa Clara. However, the return of the County of Santa Clara to its original "operating
17 territory" status was not formally accomplished. See March 7, 2012 Oakland Athletics media
18 release.

19 47. Unable to acquire public financing in the South Bay, the Giants eventually
20 obtained private financing for the 2000 construction of AT&T Park in San Francisco's China
21 Basin. Notably, this new stadium was closer to the A's home stadium than Candlestick Park.

22 48. As early as 2004, Baseball San José, a community organization promoting
23 relocation of the Athletics to San José, lobbied the City of San José to authorize a new stadium
24 in San José to lure the Athletics. However, the Athletics chose to pursue a new stadium deal in
25 Fremont.

26 49. In October 2004, San José and the San José Redevelopment Agency ("RDA")
27 began studying the potential for developing a ballpark in the Diridon Station area. That process
28 culminated in February 2007, with the certification of an Environmental Impact Report ("EIR")

1 for a ballpark project consisting of a 1.5 million square-foot MLB stadium and a parking
2 structure with ground floor commercial uses on approximately 23.1 acres in San José. The
3 ballpark proposed in 2007 had a maximum seating capacity of 45,000. In early 2009, San José
4 began exploring the development of a modified project and proposed an Athletics ballpark to
5 be built on 13.36 acres near the Diridon train station, bounded by Park Avenue and San
6 Fernando and Autumn streets. The current ballpark concept reduces the size of the stadium
7 from 45,000 to 32,000 seats. The following is an illustration of the proposed ballpark:



50. Sports venues have become a catalyst for urban transformation or revitalization. New sports facilities attract businesses to the neighborhoods surrounding the sports facility, which creates additional jobs, consumer spending, and tax revenue. New sports facilities also create an incentive for new hotels, restaurants, and businesses to move to a city, which serves

1 to revitalize a city by creating more economic activity, even out of season. The downtown
2 areas then generate higher hotel occupancy, restaurant patronage, retail jobs, and city revenues
3 as the fans can walk from the stadium to restaurants and bars to celebrate. The districts
4 themselves then become as much of an attraction as the events and facilities in the cities.

5 51. A 2009 Economic Impact Analysis prepared by Conventions Sports and Leisure
6 International ("CSL") for the RDA **detailed the economic benefits of the proposed Athletics**
7 **stadium in San José** ("CSL Study"). The CSL Study provided independent and conservative
8 estimates of the quantifiable impacts that would be generated by an Athletics stadium in San
9 José. A copy of the CSL Study is attached as Exhibit 1. Findings and estimates of the CSL
10 Study include the following:
11

- 12 ▪ \$96.0 million in net new direct spending in San José during a three year construction
13 period; \$558,000 in sales tax revenues to the City over the three year construction
14 period;
- 15 ▪ 980 jobs supported annually due to ballpark development;
- 16 ▪ \$82.9 million in net new annual direct spending in San José following construction,
17 with a 30-year present value of \$1.8 billion;
- 18 ▪ \$130 million ballpark-produced annual net new output in the City;
- 19 ▪ Over a 30-year period, the estimated net present value of the total new economic
20 output generated by spending related to the ballpark is \$2.9 billion;
- 21 ▪ \$1.5 million per year in net new tax revenues would be generated for San José's
22 General Fund, and more than \$3.5 million per year for other local agencies,
23 including:
 - 24 ○ \$706,000 a year for Redevelopment Agency Housing;
 - 25 ○ \$912,000 for Redevelopment Agency Non-Housing;
 - 26 ○ \$109,000 for San José General Obligation bonds; and,
 - 27 ○ \$495,000 for the San José Unified School District;
- 28 ▪ The net present value of the City tax revenues generated by the ballpark over a 30-
 year and 50-year period is estimated to be approximately \$31.2 million and \$42.0
 million, respectively;
- Local hotels, restaurants, stores, and night spots would benefit, with the average
 ballpark attendee anticipated to spend \$47 at businesses outside of the stadium; and,

- 1 ▪ San José would benefit substantially more from development of the MLB baseball
2 park than by using the same land for an alternative development.

3 52. On March 7, 2012, the **Oakland Athletics** issued a statement "regarding A's and
4 Giants sharing Bay Area territory." The Oakland Athletics statement contained the following
5 points:

- 6 a. Of the four two-team markets in MLB, only the Giants and Athletics do
7 not share the exact same geographic boundaries;
8 b. MLB-recorded minutes clearly indicate that the Giants were granted Santa
9 Clara County subject to relocating to the City of Santa Clara;
10 c. The granting of Santa Clara County to the Giants was by agreement with
11 the Athletics late owner Walter Haas, who approved the request without
12 compensation to the Athletics;
13 d. The Giants were unable to obtain a vote to move to Santa Clara County
14 but the return of Santa Clara County to its original status in the MLB
15 Constitution was not fully accomplished; and,
16 e. The Athletics "are not seeking a move that seeks to alter or in any manner
17 disturb MLB territorial rights." Instead, the Athletics "seek an approval
18 to create a new venue that our organization and MLB fully recognize is
19 needed to eliminate [] dependence on revenue sharing."

20 53. On May 12, 2009, the San José City Council and the Redevelopment Agency of
21 the City of San José established negotiating principles for the development of a stadium in the
22 downtown area of the City of San José for a Major League Baseball team, which were
23 subsequently amended by the City Council on August 3, 2010.

24 54. In 2010, after the Athletics' Fremont deal collapsed, the City of San José again
25 explored a stadium deal with the Athletics. The San José City Council reviewed and
26 unanimously approved an **environmental impact study** ("EIS"). Upon approval of the EIS,
27 San José Mayor Chuck Reed called for a public vote on whether the Athletics could purchase
28

1 land and build a new stadium for the Athletics in San José. However, at Commissioner Selig's
2 request, Mayor Reed delayed the vote pending the MLB Relocation Committee's determination
3 of the A's-Giants territorial dispute.

4 55. On September 10, 2010, through the efforts of the Silicon Valley Leadership
5 Group, a letter from seventy-five of Silicon Valley's leading CEOs was sent to MLB urging
6 Commissioner Selig to approve the Athletics' move to San José. A copy of the September 10,
7 2010 Letter is attached at Exhibit 2.

8 56. In March 2011, the City of San José transferred assets in anticipation of the
9 Athletics move to San José. The RDA transferred several properties in the Diridon
10 Redevelopment Project Area ("Diridon Area") to the San José Diridon Joint Powers Authority,
11 a joint powers authority made up of the City of San José and the RDA ("JPA"). The properties
12 that were the subject of the transfer were originally purchased by the RDA with the intent that
13 the properties, along with adjacent properties, be developed into a MLB park, or alternatively a
14 mixed use development with housing.²

15 57. On November 8, 2011, the **San José City Council** executed an option
16 agreement with the Athletics Investment Group (the "Option Agreement"). A copy of the
17 Option Agreement is attached at Exhibit 3. The Option Agreement granted the Athletics a two
18 year option (with an additional one year extension) to purchase six of the parcels of land that
19 San José transferred to the JPA in March 2011. The Option Agreement permits the Athletics to
20 purchase six parcels located in the Diridon Area of Downtown San José to build a new stadium
21 for a purchase price of \$6,975,227 (the "San José Stadium Property"). In exchange for the
22 option to purchase these six properties from the JPA, the Athletics agreed to pay \$50,000 for
23 the two year option, with the authority to extend the option term by one year (to November 8,
24 2014) for an additional \$25,000.

25
26
27 ² On June 28, 2011, three months after San José transferred the properties to the JPA, the Governor signed into law
28 ABX1 26, which prohibited Redevelopment Agencies from engaging in new business, established mechanisms and
timelines for the dissolution of Redevelopment Agencies and created Successor Agencies to oversee dissolution of
the Redevelopment Agencies and redistribution of Redevelopment Agency assets:

1 58. The Option Agreement further obligated the JPA and the Athletics to negotiate,
2 in good faith, a purchase and sale agreement for the San José Stadium Property (the "Purchase
3 Agreement"), with a first draft to be exchanged within 90 days. The Option Agreement
4 specified provisions that were required to be included in the Purchase Agreement.

5 59. A March 2010 poll conducted by the San José State University's Survey and
6 Policy Research Institute on behalf of the Mercury News found that 62 percent of those
7 surveyed favored giving the Athletics city owned land for a stadium, with only 23.5 percent
8 opposed. The margin of error for the poll was 4.25 percentage points.

9 60. Various local organizations, including the San José Silicon Valley Chamber of
10 Commerce, the San José Convention and Visitors Bureau, the San José Sports Authority, and
11 Baseball San José, have all expressed their support for a relocation by the Athletics to San José.

12 61. On December 2, 2011, Stand For San José (a coalition group backed by the San
13 Francisco Giants and the San José Giants to block the Athletics relocation to San José) filed a
14 civil action against the City of San José, and the San José Redevelopment Agency, among
15 others, in Santa Clara Superior Court, Case No. 1-11-CV-214196. Stand For San José named
16 Athletics Investment Group LLC as the real party in interest in that action. Despite a thorough
17 EIS, the lawsuit claims the studies on issues such as traffic and air quality are insufficient under
18 the California Environmental Quality Act ("CEQA"), allegedly necessitating additional studies.

19 62. Despite the Giants' staunch opposition, the County of Santa Clara, the City of
20 San José, and leading Silicon Valley businesses support the Athletics relocation. On July 31,
21 2012, through the efforts of the Silicon Valley Leadership Group, a letter from thirty-three of
22 Silicon Valley's leading CEOs and Presidents was sent to Charlie Johnson, principal owner of
23 the San Francisco Giants, urging Mr. Johnson to allow approval of the Athletics' move to San
24 José. A copy of the July 31, 2012 Letter is attached at Exhibit 4.

25 63. In an April 2, 2013 letter to Commissioner Selig, San José Mayor Reed wrote:
26 When will the A's be moving to San José? That's the question that is most often
27 asked of me by CEOs of Silicon Valley companies competing to retain and attract
28 global talent . . . The A's ownership continues to express its desire to locate the

1 team in San José and I strongly endorse that outcome . . . Direct communication
2 between us will help resolve any lingering issues about our commitment to having
3 the A's home plate be located in San José and could reduce the probability of
4 additional litigation.

5 64. In an April 4, 2013 response, Commissioner Selig wrote Mayor Reed. Instead of
6 meeting with Mayor Reed, the Commissioner referred the Mayor to MLB Relocation
7 Committee Chairman Robert Starkey or other members of the Relocation Committee.

8 65. Commissioner Bud Selig has failed to act on this territorial dispute for several
9 years. In March 2009, Commissioner Selig appointed a special Relocation Committee to
10 evaluate the Bay Area territorial issues. The MLB Relocation Committee includes:

- 11 • Chairman Bob Starkey: a former Arthur Anderson accountant who had
12 done extensive work for the Commissioner and the Minnesota Twins;
- 13 • Corey Busch: a former San Francisco Giants Executive Vice President
14 under Bob Lurie;
- 15 • Irwin Raij: an attorney at Foley & Lardner, LLP, who worked on ballpark
16 deals for the Washington Nationals and Florida Marlins; and
- 17 • Bob DuPuy: Major League Baseball's Chief Operating Officer.

18 66. At the January 2012 owners' meetings, Commissioner Selig said the situation
19 was on the "front burner." On March 7, 2012, MLB spokesman Pat Courtney stated during a
20 press conference, "No decisions have been made." As recently as May 16, 2013,
21 Commissioner Selig participated in a press conference, announcing that MLB had no news on
22 the quest of the Oakland Athletics to relocate to San José. Commissioner Selig also said the
23 MLB Relocation Committee appointed in March 2009 "is still at work."

24 67. Defendants assert that, in a letter dated June 17, 2013 from Commission Selig to
25 Lewis Wolff (managing partner of the Athletics), Defendants denied the relocation request of
26 the Athletics. However, this purported denial was done secretly and Defendants refuse to
27 release the contents of the June 17, 2013 letter to Plaintiffs or the public.
28

1 68. This purported denial of the Athletics' relocation request did not cause the
2 Athletics from extending the Option Agreement. On September 26, 2013, the Athletics
3 Investment Group LLC elected to extend the Option Agreement's exercise period through
4 November 8, 2014 by paying the extension fee of \$25,000. A copy of the September 23, 2013
5 letter extending the Option Agreement is attached at Exhibit 4.

6 69. The Oakland Athletics have expressed the desire to move the Club to the City of
7 San José and to exercise the Option Agreement. However, MLB has made it clear that it plans
8 to oppose and prevent the relocation of the Oakland Athletics to San José.

9 **D. THE MLB CONSTITUTION**

10 70. The Major League Constitution (the "MLB Constitution") governs the operation
11 of Major League Baseball and is an agreement among the MLB Clubs. A copy of the MLB
12 Constitution is attached at Exhibit 6.

13 71. Article VIII, Section 8 of the MLB Constitution provides in part: "The Major
14 League Clubs shall have assigned operating territories within which they have the right and
15 obligation to play baseball games as the home Club."

16 72. The relevant territories are as follows (Article VIII, Section 8):

17 **San Francisco Giants:** City of San Francisco; and San Francisco, San Mateo, Santa
18 Cruz, Monterey and Marin Counties in California; provided, however, that with
19 respect to all Major League Clubs, Santa Clara County in California shall also be
20 included.

21 **Oakland Athletics:** Alameda and Contra Costa Counties in California.

22 73. However, there are a number of examples of Clubs that have overlapping
23 territories. (e.g., the Los Angeles Dodgers and the Los Angeles Angels; the New York Mets
24 and the New York Yankees; the Chicago White Sox and the Chicago Cubs). Of the four two-
25 team markets in MLB, only the San Francisco Giants and the Oakland Athletics do not share
26 the exact same geographic boundaries.

27 74. The purpose and effect of Article VIII, Section 8 of the MLB Constitution is to
28 grant exclusive territories to the MLB Clubs and allowing Clubs to interfere with contracts

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1 whereby another Club wishes to relocate into an operating territory previously assigned to an
2 MLB Club.

3 75. Because of the provisions of the MLB Constitution, the relocation of the Oakland
4 Athletics to San José, California, would purportedly place them within the "operating territory"
5 of the San Francisco Giants Club, and therefore subject to application of Article VIII, Section 8
6 of the MLB Constitution.

7 76. Upon information and belief, the San Francisco Giants Club has exercised and/or
8 threatened to exercise its rights to an operating territory to interfere with the Option Agreement
9 and the relocation of the Oakland Athletics Club to San José.

10 77. In addition, MLB has imposed a lengthy and, under the circumstances,
11 unreasonable process for relocation of the Oakland Athletics Club. The process has been
12 intended solely to interfere with the Option Agreement and to prevent the proposed relocation
13 of the Oakland Athletics to San José. MLB Commissioner Bob Selig has publicly stated:
14 "They need approval. We have to go through an approval process. It just depends on where
15 they're moving to." Commissioner Selig also has stated that there is no timetable for resolving
16 the territorial dispute between the Oakland A's and the San Francisco Giants.

17 78. Under the MLB Constitution the **vote of three-fourths** of the Major League
18 Clubs is required for the relocation of any of the Clubs. (Article V, Sec. 2(b)(3).) Similarly a
19 **three-fourths vote** is required to amend the Constitution (which would be necessary to change
20 the territorial rights specified in Article VIII, Section 8 of the MLB Constitution). A **three-**
21 **fourths vote** is also required for there to be expansion by the addition of a new Club or Clubs.
22 (Article V, Sec. 2(b)(1).)

23 79. Notably under Article VI, Sections 1-2 of the MLB Constitution, the Clubs agree
24 that any disputes between the Clubs related in any way to professional baseball shall not be
25 subject to litigation and shall be decided solely by the Commissioner as arbitrator.

26 **E. THE GIANTS BLOCK THE A'S RELOCATION TO SAN JOSÉ**

27 80. In 2005, investors led by John Fischer and Lew Wolff purchased the Athletics.
28 Faced with abysmal attendance and an old stadium in Oakland, Wolff pursued a move to the

1 South Bay. From 2006 to 2009, with the support of Major League Baseball, the Athletics
2 attempted to broker a deal to build CISCO Field in Fremont. As it became clear the Fremont
3 City Council would not approve the stadium, Commissioner Selig wrote Mr. Wolff a letter
4 indicating that the Athletics had the right to "discuss a ballpark with other communities," *e.g.*,
5 San José.

6 81. In February 2009, the Athletics terminated plans for a new stadium in Fremont,
7 and turned their focus to San José. The Giants immediately interceded to prevent the Athletics
8 from moving to San José. The Giants disingenuously took the position that the 1990 consent
9 by the Athletics to allow the Giants to relocate to San José barred the Athletics from moving to
10 San José in perpetuity. Notably when the Giants moved to AT&T Park from Candlestick, they
11 moved closer to the Athletics' ballpark. If the Athletics were to move to the proposed site next
12 to the HP Pavilion in San José, they would be 48 miles from AT&T Park (instead of the current
13 distance of 16.4 miles).

14 82. Commenting on the controversy, Bud Selig stated:

15 "Wolff and the Oakland ownership group and management have worked very
16 hard to obtain a facility that will allow them to compete into the 21st century . . .
17 The time has come for a thorough analysis of why a stadium deal has not been
18 reached. The A's cannot and will not continue indefinitely in their current
19 situation."

20 F. DEFENDANTS' CONDUCT INTERFERES WITH THE OPTION
21 AGREEMENT

22 83. As the years have dragged on, the activities of the MLB Relocation Committee
23 have remained shrouded in secrecy. Commissioner Selig issued a directive that the A's and the
24 Giants were prohibited from discussing any aspect of the dispute in public. The silence from
25 the Clubs was briefly broken when on March 7, 2012, three years after the MLB Relocation
26 Committee was formed, the Athletics issued a short press release seeking to outline key facts of
27 the dispute including the following:
28

1 • Of the four two-team markets in Major League Baseball, only the Giants
2 and A's do not share the exact same geographic boundaries;

3 • Major League Baseball recorded minutes that clearly indicate the Giants
4 were granted territorial rights to Santa Clara County "subject to" the team's relocation to
5 Santa Clara;

6 • The granting of territorial rights to Santa Clara County to the Giants was
7 by agreement with the Athletics late owner, Walter Haas, who approved the request
8 without consideration;

9 • Despite the fact the Giants were unable to obtain a vote to move to Santa
10 Clara County, those territorial rights were never formally returned to their original status;
11 and,

12 • The Athletics "are not seeking a move that seeks to alter or in any manner
13 disturb MLB territorial rights." Instead, the Athletics "seek an approval to create a new
14 venue that our organization and MLB fully recognize is needed to eliminate []
15 dependence on revenue sharing."

16 84. The Giants issued a curt rebuttal claiming the City of San José is in the Giants'
17 defined territory and if the Athletics were allowed to move there, it would undermine the
18 Giants' investment in its stadium in San Francisco and marketing to fans.

19 85. As reflected in Exhibit 3, since November 8, 2011, Plaintiffs and the Athletics
20 Investment Group have been contractually obligated to one another under an Option
21 Agreement. The Option Agreement granted the Athletics a two year option (with a one year
22 extension) to purchase six of the parcels of land that San José transferred to the JPA in March
23 2011. The Option Agreement permits the Athletics to purchase the San José Stadium Property
24 for a purchase price of \$6,975,227. Defendants are interfering with and preventing the
25 operation of the contract between the Athletics and San José as Defendants are actively
26 preventing the Athletics from relocating to San José. In addition to interfering with the existing
27 Option Agreement, Defendants are interfering with negotiation of a Purchase Agreement (as
28

provided for in the Option Agreement), and are also interfering with the economic relationship between Plaintiffs and the Athletics.

86. Despite being aware of the Option Agreement, Defendants have prevented the Athletics from moving to San José, even though they knew that their actions would interfere with the performance of the contract. Defendants' actions, if not stopped, will serve to completely prevent performance of the contract as the Athletics cannot move to San José without the consent of MLB.

87. Defendants' acts have disrupted the economic relationship between San José and the Athletics, as well as performance under the Option Agreement and negotiation of a Purchase Agreement pursuant to the Option Agreement.

G. PLAINTIFFS HAVE BEEN DAMAGED

88. As reflected in Exhibit 3, since November 8, 2011, the San José City Council and the Athletics Investment Group have been contractually obligated to one another under an Option Agreement. The Option Agreement granted the Athletics a two year option to purchase six of the parcels of land that San José transferred to the JPA in March 2011. The Option Agreement permits the Athletics to purchase the San José Stadium Property for a purchase price of \$6,975,227. Defendants are interfering with and preventing the operation of the contract between the Athletics and San José as Defendants are actively preventing the Athletics from relocating to San José.

89. Plaintiffs are governmental entities which have suffered damages under California law. As reflected in the history of this dispute, Plaintiffs compete with other major cities in the United States for Major League Baseball Clubs. The City of San José is in competition with other major cities that have the interest and ability to invest in hosting a Major League Baseball Club. San José is the tenth largest city in the United States and is the urban center of the Silicon Valley. By population, San José is significantly larger than San Francisco.

90. Plaintiffs have suffered millions in harm and stand to suffer billions in harm due to Defendants' refusal to permit the Athletics to move to San José. Specifically, the City of

1 San José has lost hundreds of jobs, property tax revenue, and sales tax revenue. This harm is all
2 directly attributable to Defendants' conduct.

3 91. MLB has interfered with the Option Agreement between Plaintiffs and the
4 Athletics Investment Group by denying permission for the Athletics to relocate to San José.

5 92. Defendants' interference has resulted in the loss of Plaintiffs' contractual and
6 property rights.

7 93. While the full amount of Plaintiffs' damages will be calculated after discovery
8 and awarded based on proof at trial, Defendants' interference alleged herein has injured
9 Plaintiffs and threatened Plaintiffs with loss or damage in at least the following ways:

10 1. The tax revenue to be received by the City of San José has been
11 greatly diminished

12 94. San José reasonably expected an expansion of its tax base through the building of
13 a MLB stadium in the Diridon Station area and the hosting of the Athletics as the home city of
14 the team. The 2009 CSL Study which specifically analyzed the economic impact of the
15 Athletics relocating to San José, concluded that hundreds of thousands in tax revenue would be
16 generated in the construction period alone.

17 2. The City of San José has lost millions in new direct spending that
18 would have accrued during the construction period and the post-
19 construction period

20 95. Net new direct spending during the construction period for the Athletics stadium
21 in San José has been conservatively estimated at \$96.0 million just during a three year
22 construction period. Net new direct spending would then level off to \$82.9 million in net new
23 annual direct spending following construction, with a 30-year present value of \$1.8 billion.
24 This is direct spending that will not occur absent the relocation of the Athletics.

25 3. The City of San José's General Fund has lost millions

26 96. San José's General Fund has experienced shortfalls for a number of years as the
27 City has sought to weather the economic crisis. The City's struggling General Fund had been
28 damaged by Defendants' refusal to permit the Athletics to move to San José. The CSL Study

03 / 10 / 2014

1 provides the conservative estimate that the Athletics stadium deal would have generated \$1.5
2 million, per year, in new tax revenue for the General Fund. These funds are greatly needed for
3 the City's basic services, such as police, fire and parks and recreation.

4 4. The City of San José's local agencies, including its school district, have lost
5 hundreds of thousands of dollars on an annual basis

6 97. The City of San José's local agencies have lost millions per year due to
7 Defendants' actions. It is conservatively estimated that in addition to the General Fund
8 revenue, more than \$3.5 million per year in net new property tax revenue would have been
9 generated for other local agencies, including, \$706,000 a year for Redevelopment Agency
10 Housing, \$912,000 for Redevelopment Agency Non-Housing, \$109,000 for San José General
11 Obligation bonds; and, \$495,000 for the San José Unified School District. Again, these are all
12 funds that are desperately needed by the City and its residents.

13 5. The City of San José has lost millions in new sales tax revenue that
14 would have accrued during the construction period and the post-
15 construction period

16 98. As demonstrated by other stadium deals throughout the United States, including
17 the development of AT&T Park in San Francisco, new MLB ballparks act as a catalyst for local
18 economies. Local hotels, restaurants, stores, and nightspots all stand to benefit, with the
19 average non-resident ballpark attendee anticipated to spend \$47 at businesses outside of the
20 stadium, according to the CSL Study. Stadiums bring with them new business opportunities,
21 both directly at the stadium and in the surrounding areas. San José has lost millions in new
22 sales tax revenue as the result of Defendants' refusal to permit the Athletics to move to San
23 José. During the construction period, San José conservatively would have realized \$558,000 in
24 new tax revenue. The net present value of the City tax revenues generated by the ballpark over
25 a 30-year and 50-year period has been estimated to be approximately \$31.2 million and \$42.0
26 million, respectively.
27
28

1 6. The City of San José has lost hundreds of new jobs and the related
2 revenues that would have been generated for the City

3 99. Defendants' actions have resulted in the loss of hundreds of jobs in San José –
4 including construction jobs, stadium jobs, service sector jobs and retail jobs. The CSL Study
5 analyzed job growth that would be associated with the Athletics' move and found that 980 jobs
6 would be supported annually due to ballpark development. The net present value of the total
7 personal earnings generated by the jobs created as a result of the ballpark over a 30-year and
8 50-year period is estimated to be approximately \$1.4 billion and \$2.0 billion, respectively, by
9 the CSL Study.

10 7. The City of San José has lost new economic output generated by
11 spending related to the ballpark

12 100. It is estimated that by 2018, the planned ballpark could conservatively generate
13 approximately \$86.5 million in net new direct spending within the City of San José. Over a 30-
14 year and 50-year term, it is estimated that the net present value of this net new direct spending
15 could be approximately \$1.9 billion and \$2.7 billion, respectively. The net new direct
16 spending in the local economy as a result of the annual operations of the proposed ballpark
17 will, in turn, generate approximately \$130.3 million in total net new output in the City of San
18 José. Overall, it is estimated that the net present value of the total net new economic output
19 generated by the spending related to the operations of the ballpark would be approximately
20 \$2.9 billion over a 30-year period and \$4.1 billion over a 50-year period.

21 8. Plaintiffs failed to receive the benefits to which they were entitled
22 under the Option Agreement, which benefits they would have
23 received in an competitive marketplace absent Defendants'
24 conspiracy

25 101. As stated above, on November 8, 2011, the San José City Council executed an
26 Option Agreement with the Athletics Investment Group which granted the Athletics a two year
27 option to purchase six of the parcels of land that San José transferred to the JPA in March
28 2011. The Option Agreement permits the Athletics to purchase the San José Stadium Property

1 for a purchase price of \$6,975,227. In exchange for the option to purchase the San José
2 Stadium Property the Athletics agreed to pay \$50,000 for the two year option, with the
3 authority to extend the option term by one year for an additional \$25,000. As described in
4 detail above, the Athletics desire to move forward with the relocation to San José and
5 construction of the stadium. They are prevented from moving due to Defendants' interference.

6 9. Plaintiffs have lost millions of dollars spent on planning for the
7 franchise relocation

8 102. San José and the San José Redevelopment Agency have been actively working on
9 the development of the ballpark in the Diridon Station area since 2004. That process
10 culminated in February 2007, with the certification of an Environmental Impact Report ("EIR")
11 for the ballpark project. Since 2007 the EIR has been updated and amended. This has been an
12 expensive and time consuming process. In addition, the City and the RDA have commissioned
13 the preparation of economic impact analysis, including the CSL Study.

14 V. CAUSES OF ACTION

15 FIRST CAUSE OF ACTION

16 TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

17 103. Plaintiffs incorporate and reallege, as though fully set forth herein, each and
18 every allegation set forth in the preceding paragraphs of this Complaint.

19 104. Under the Option Agreement, Plaintiffs enjoyed a successful economic
20 relationship with the Oakland Athletics Club. Defendants knew Plaintiffs had an existing
21 economic relationship with the Oakland Athletics Club and that relationship included future
22 economic benefits for Plaintiffs. Were it not for Defendants' wrongful scheme to block
23 relocation of the Oakland Athletics Club to San José, Plaintiffs' economic relationship with the
24 Oakland Athletics Club would have continued forward for the duration of the Option
25 Agreement and for the foreseeable future.

26 105. Defendants intentionally interfered with Plaintiffs' economic relationship with
27 the Oakland Athletics Club by blocking relocation of the Oakland Athletics to San José.
28

1 Defendants knew that such actions would interfere or was substantially certain to interfere with
2 the economic relationship between the Oakland Athletics Club and the City of San José.

3 106. As a direct and proximate result of Defendants' actions, the economic
4 relationship between the Oakland Athletics Club and Plaintiffs was in fact disrupted.

5 107. Defendants' actions in interfering with Plaintiffs' economic relationship with the
6 Oakland Athletics Club were wrongful including insofar as Defendants' actions violated
7 California's Unfair Competition law.

8 108. As a result of the wrongful actions of Defendants, and each of them, Plaintiffs
9 have been damaged in an amount to be proven at trial, but which exceeds \$75,000 (exclusive of
10 interest and costs), and which, at a minimum, includes millions of dollars of lost revenues to
11 Plaintiffs resulting from Plaintiffs' loss of revenue it reasonably expected under the Option
12 Agreement and the Purchase Agreement, respectively.

13 109. The aforementioned acts of Defendants were willful, oppressive, and/or
14 malicious. Plaintiffs are therefore entitled to punitive damages in an amount to be proven at
15 trial, in addition to all other damages and other relief.

16 **SECOND CAUSE OF ACTION**

17 **TORTIOUS INTERFERENCE WITH CONTRACTUAL ADVANTAGE**

18 110. Plaintiffs incorporate and reallege, as though fully set forth herein, each and
19 every allegation set forth in the preceding paragraphs of this Complaint.

20 111. Defendants have engaged in wrongful acts to intentionally interfere with the
21 economic and contractual relationship between Plaintiffs and the Oakland Athletics Club.

22 112. On November 8, 2011, the City Council of the City of San José entered into a
23 valid contract with the Oakland Athletics Club -- specifically the Athletics Investment Group --
24 in the form of the Option Agreement, benefits and rights under which specifically inured to
25 Plaintiffs.

26 113. Defendants were aware of the existence of the Option Agreement and were also
27 aware that, through the Option Agreement, Plaintiffs were the direct and principal beneficiaries
28 of significant rights with respect to relocating the Oakland Athletics Club to San José.

1 114. Upon information and belief, when Defendants created the MLB Relocation
2 Committee and intentionally engaged in tactics delaying any decision of the MLB Relocation
3 Committee for over four years, Defendants knew such activity would interfere or was
4 substantially certain to interfere with the Option Agreement.

5 115. As a direct and proximate result of Defendants' wrongful actions, performance
6 under the Option Agreement and negotiation of a Purchase Agreement pursuant to the Option
7 Agreement were in fact disrupted. Defendants disrupted the contractual relationship between
8 the Oakland Athletics Club and Plaintiffs.

9 116. As a result of the wrongful actions of Defendants, and each of them, Plaintiffs
10 have been damaged in an amount to be proven at trial, but which exceeds \$75,000 (exclusive of
11 interest and costs), and which, at a minimum, includes millions of dollars of lost revenues to
12 Plaintiffs resulting from Plaintiffs' loss of revenue it reasonably expected under the Option
13 Agreement and the Purchase Agreement, respectively.

14 117. The aforementioned acts of Defendants were willful, oppressive, and/or
15 malicious. Plaintiffs are therefore entitled to punitive damages in an amount to be proven at
16 trial, in addition to all other damages and other relief.

17 WHEREFORE, Plaintiffs pray for relief as set forth below.

18 **VI. PRAYER FOR RELIEF**

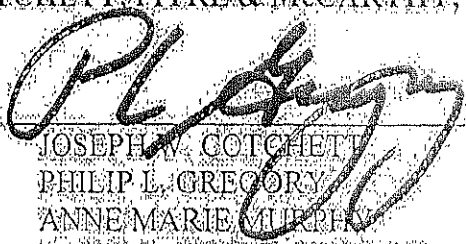
19 WHEREFORE, Plaintiffs, and each of them, pray as follows:

- 20 A. Plaintiffs be awarded actual damages according to proof at trial;
21 B. Plaintiffs be awarded punitive damages according to proof at trial;
22 C. Plaintiffs be awarded pre-judgment and post-judgment interest at the highest
23 legal rate from and after the date of service of this Complaint to the extent provided by law;
24 and,
25 C. Plaintiffs have such other, further, or different relief, as this Court may deem just
26 and proper under the circumstances.
27
28

1 Dated: March 10, 2014

COTCHETT PITRE & McCARTHY, LLP

2
3 By:


JOSEPH W. COTCHETT
PHILIP L. GREGORY
ANNE MARIE MURPHY
CAMILO ARTIGA-PURCELL
Attorneys for Plaintiffs

7 OFFICE OF THE CITY ATTORNEY

8
9 By:


NORA PRIMANN
RICHARD DOYLE
Attorneys for Plaintiffs

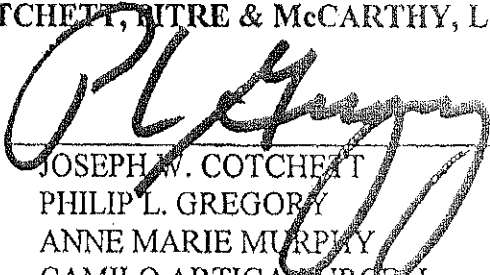
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: March 10, 2014

COTCHETT, PITRE & McCARTHY, LLP

By:


JOSEPH W. COTCHETT
PHILIP L. GREGORY
ANNE MARIE MURPHY
CAMILO ARTIGA-TURCELL
Attorneys for Plaintiffs

03/10/2014

Exhibit 3

FILED

UNITED STATES COURT OF APPEALS

FEB 20 2014

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CITY OF SAN JOSE; et al.,

Plaintiffs - Appellants,

v.

OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated
association, DBA Major League Baseball
and ALLAN HUBER SELIG, "Bud",

Defendants - Appellees.

No. 14-15139

D.C. No. 5:13-cv-02787-RMW
Northern District of California,
San Jose

ORDER

Before: LEAVY and TASHIMA, Circuit Judges

Appellants' opposed motion to expedite briefing and hearing on appeal is granted. The opening brief is due March 5, 2014. The answering brief is due April 4, 2014. The optional reply brief is due within 14 days after service of the answering brief.

This case shall be placed on the next available calendar after the completion of briefing. Any request for an extension of time to file a brief is disfavored and must be made under Ninth Circuit Rule 31-2.2(b). No streamline requests for extensions of time in which to file briefs will be approved.

Exhibit 4



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Marne S. Sussman
tel 415.983.1916
marne.sussman@pillsburylaw.com

June 26, 2013

Via Email

Honorable Members of the Oversight Board
San Jose City Hall
200 E. Santa Clara Street
San Jose, CA 95113

Re: June 27, 2013 Agenda Item 7.1: Asset Transfers Update Report

Dear Members of the Oversight Board:

This letter is submitted on behalf of Stand For San Jose, a coalition of entities and individuals who are vitally concerned with the City's future and seek to ensure that issues critical to taxpayers, jobs, local businesses and neighborhoods are put first as the City evaluates proposed development projects that have the potential to significantly impact the City's way of life. On December 2, 2011, Stand For San Jose filed suit challenging the San Jose City Council's approval of the Option Agreement between Athletics Investment Group, LLC ("AIG") and the Diridon Development Authority ("DDA") dated as of November 8, 2011 (the "Option Agreement") for the sale of certain parcels in the Diridon area of San Jose ("Diridon property"). This action also challenged the Environmental Impact Report ("EIR") certified for the project.

Stand For San Jose submits this letter in response to the Oversight Board's Agenda Item 7.1 regarding the transfer of the Diridon property from the DDA to the Successor Agency pursuant to the State Controller's Asset Transfer Review Report ("Controller's Report"). Stand For San Jose objects to the Successor Agency's treatment of the Option Agreement as an enforceable obligation and urges the Oversight Board to reject the Successor Agency's determination that the Diridon property should be accepted subject to the Option Agreement.

The Option Agreement is not an enforceable obligation and is void and of no legal effect for the following reasons:

June 26, 2013
Via Email

Page 2

- The State Controller's order that the DDA return the Diridon property to the Successor Agency demonstrates that the property was transferred from the former Redevelopment Agency to the DDA in violation of Redevelopment Law. Because this initial transfer was illegal, the DDA did not validly control the Diridon property at the time it entered into the Option Agreement and the DDA did not have authority to enter into the Option Agreement. As a result, the Option Agreement is not an enforceable obligation of the Successor Agency. As the Oversight Board must direct the Successor Agency to terminate all existing agreements that do not qualify as enforceable obligations, the Oversight Board must direct the Successor Agency to terminate the Option Agreement.
- The EIR prepared for the proposed baseball stadium project to be constructed at the Diridon property is inadequate under the California Environmental Quality Act ("CEQA"). Valid CEQA review is required before such an Option Agreement can be approved and without an adequate EIR the Option Agreement is void.
- The Option Agreement involves the use of public funds to develop a ballpark, an action which requires a public vote under the San Jose Municipal Code; however, no such vote was taken. San Jose Municipal Code § 4.95 prohibits the City from participating in the building of a sports facility using tax dollars unless such expenditure is first approved by a majority vote of San Jose voters. By approving an Option Agreement in which AIG would receive a 50 percent discount from the then-current fair market value on the Diridon property, the City effectively used public funds to participate in the development of a private ballpark without the mandatory public vote.
- The Controller's Report ordered the City to return the Diridon property from the DDA (which received the Diridon property from the now-dissolved Redevelopment Agency) to the City's Successor Agency. Allowing the Successor Agency to accept return of the Diridon property subject to the Option Agreement would not comply with the Controller's Report. The Controller's Report ordered the Diridon property returned, not the Diridon property returned subject to the Option Agreement.

Treating the Option Agreement as an enforceable obligation would result in a significant loss of revenue to the City and its public services, including the schools and other relevant taxing agencies represented by the Oversight Board. Under the Option Agreement, AIG has the option to purchase the Diridon property for approximately \$7 million, despite the fact that the property was appraised at approximately \$14 million at the time the Option Agreement was entered into and is

June 26, 2013
Via Email

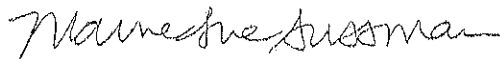
Page 3

listed as having a 2013 book value of approximately \$29 million in the Controller's Report. Thus, the taxing entities that receive distributions from the Successor Agency stand to lose approximately \$22 million if the Oversight Board validates the Option Agreement. This revenue should be used to improve our local communities rather than to subsidize AIG's development of a private ballpark.

Finally, the Oversight Board's approval of the Successor Agency's determination that the Diridon property should be accepted subject to the Option Agreement is in and of itself subject to CEQA review. In this instance, a categorical exemption does not suffice for CEQA review as there is evidence that the action may have an impact on the environment. In addition, the Oversight Board cannot rely on the previous EIR prepared for the Option Agreement and sale of the Diridon property as it is inadequate, and thus further CEQA review is required.

For these reasons, the Oversight Board should reject the Successor Agency's determination that the Diridon property be accepted subject to the Option Agreement and declare that the Option Agreement is not an enforceable obligation and is not binding on the Successor Agency.

Sincerely yours,



Marne S. Sussman

cc: Chuck Reed, Oversight Board Chair, City of San Jose
Abraham Andrade, Oversight Board Member, City of San Jose
John Guthrie, Oversight Board Member, County of Santa Clara
Emily Harrison, Oversight Board Member, County of Santa Clara
Ed Maduli, Oversight Board Member, California Community Colleges
Micaela Ochoa, Oversight Board Member, Santa Clara County Office of Education
Tony Estremera, Oversight Board Member, Santa Clara Valley Water District
David Barry, Oversight Board Alternate, County of Santa Clara
Kelly Hyland, Oversight Board Alternate, City of San Jose
Nimrat Johal, Oversight Board Alternate, Santa Clara County Office of Education
Pierluigi Oliverio, Oversight Board Alternate, City of San Jose
David Snow, Oversight Board Alternate, County of Santa Clara
Debra Figone, Successor Agency Executive Director
Richard Doyle, Successor Agency General Counsel
Vinod Sharma, Director of Finance, County of Santa Clara
John Chlang, California State Controller
Ana Matosantos, Director, California Department of Finance

Exhibit 5



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marne.sussman@pillsburylaw.com

August 12, 2013

Via Email and 1st Class Mail

Honorable Members of the Successor Agency
San Jose City Hall
200 E. Santa Clara Street
San Jose, CA 95113

Re: August 13, 2013 Agenda Item 2: Transfer of Assets to the Successor Agency subject to Option Agreement with Athletics Investment Group (645 Park Avenue)

Dear Members of the Successor Agency:

This letter is submitted on behalf of Stand For San Jose, Eileen Hannan, Michelle Brenot, Robert Brown, Karen Shirey, Fred Shirey and Robert Shields (together, "Petitioners"), who are concerned with the City's future and seek to ensure that issues critical to taxpayers, jobs, local businesses and neighborhoods are put first as the City evaluates proposed development projects that have the potential to significantly impact the City's way of life.¹

Petitioners submit this letter in response to the Successor Agency's Agenda Item 2 regarding the proposed transfer of the property known as 645 Park Avenue in San Jose (the "Park Property"), which is part of the Diridon Property, from the DDA to

¹ On December 2, 2011, Petitioners filed suit challenging the San Jose City Council's approval of the Option Agreement between the Athletics Investment Group, LLC ("AIG") and the Diridon Development Authority ("DDA"), dated as of November 8, 2011 (the "Option Agreement"), for the sale of certain parcels in the Diridon area of San Jose ("Diridon Property") for a baseball stadium project. On July 30, 2013, several of the Petitioners filed a second suit challenging the retransfer of the Diridon Property to the Successor Agency to the Redevelopment Agency of the City of San Jose ("Successor Agency") in a manner "subject to" and encumbered by the Option Agreement. These actions also challenged the Environmental Impact Report ("EIR") certified for the project.

August 12, 2013
Via Email and 1st Class Mail

Page 2

the Successor Agency pursuant to the State Controller's Asset Transfer Review Report ("Controller's Report"). Petitioners object to the Successor Agency's continuing treatment of the Option Agreement as if it were an enforceable obligation, when it is not, and we urge the Successor Agency to treat the Option Agreement as unauthorized from its inception under the redevelopment law and other laws, and therefore as an unenforceable obligation.

The Option Agreement is not an enforceable obligation for the following reasons:

- The State Controller's order that the DDA return the Diridon Property to the Successor Agency demonstrates that the Diridon Property was transferred from the former Redevelopment Agency to the DDA in violation of § 34167.5 of the California Health & Safety Code (the "Code"). Because this initial transfer to the DDA was unauthorized to begin with, the DDA (itself a joint venture controlled by the City) gained no rights and did not validly own or control the Diridon Property or have authority to enter into the Option Agreement as of November 2011. Furthermore, the belated entry into the Option Agreement by the DDA did not make the transaction one outside the reach of § 34167.5, since there was no third-party contract in existence at the time AB 26 came into effect, as the Controller has ruled already. As a result, the Option Agreement was unauthorized and cannot be an enforceable obligation of the Successor Agency.
- Since the Successor Agency may only comply with enforceable obligations pursuant to § 34177(c) of the Code, and the Option Agreement is not an enforceable obligation, the Successor Agency may not accept the Park Property subject to the Option Agreement, and instead is under a legal duty to determine that the Option Agreement is unauthorized and unenforceable. This works no breach of contract or hardship with regard to AIG, as AIG took the Option Agreement subject to, and with the full knowledge of, the operation of all laws then in effect and bearing on the purported agreement, including of course the Code. Further, we note that the Oversight Board is under its own mandatory duty in the Code to direct the Successor Agency to cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations. *See* §34181(b).
- The EIR prepared for the proposed baseball stadium project to be constructed on the Diridon Property, certified in 2011, is inadequate under the California Environmental Quality Act ("CEQA"). Valid CEQA review was required before such an Option Agreement could be approved, and without an adequate EIR, the Option Agreement was void and unenforceable for this reason as well.

August 12, 2013
Via Email and 1st Class Mail

Page 3

- The Option Agreement involves the use of public funds to develop a ballpark, an action which requires a public vote under the San Jose Municipal Code; however, no such vote was taken. San Jose Municipal Code § 4.95 prohibits the City from participating in the building of a sports facility using tax dollars unless such expenditure is first approved by a majority vote of San Jose voters. By approving an Option Agreement in which AIG would receive a 50 percent discount from the then-current fair market value on the Diridon property, the City effectively used public funds to participate in the development of a private ballpark without the mandatory public vote.
- The Controller's Report ordered the City to return the Diridon Property from the DDA (which received the Diridon property from the now-dissolved Redevelopment Agency) to the Successor Agency. Acceptance of the Diridon Property by the Successor Agency "subject to" the Option Agreement fails to comply with the Controller's Report.

Treating the Option Agreement as if it were an enforceable obligation would result in a significant loss of revenue to the City and its public services, including the schools and other relevant taxing agencies. Under the Option Agreement, AIG would have the option to purchase the Diridon property for approximately \$7 million - despite the fact that the property was appraised at approximately \$14 million at the time the Option Agreement was entered into and is listed as having a 2013 book value of approximately \$29 million in the Controller's Report. Thus, the taxing entities that receive distributions from the Successor Agency stand to lose approximately \$22 million if the Option Agreement is somehow validated. This revenue must be used to improve local communities rather than to subsidize AIG's development of a private baseball stadium project ballpark.

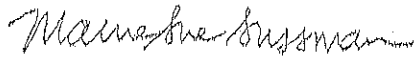
Finally, the Successor Agency's determination that the Diridon Property should be accepted "subject to" the Option Agreement is in and of itself a step in furtherance of the baseball stadium project and thus is subject to CEQA review. In this instance, no CEQA review has been provided.

For all these reasons this charade of an unenforceable agreement must end. The Successor Agency must determine that the Park Property cannot be accepted subject to the Option Agreement and declare that the Option Agreement was an unauthorized and unenforceable obligation and is not binding on the Successor Agency.

August 12, 2013
Via Email and 1st Class Mail

Page 4

Sincerely yours,



Marne S. Sussman

cc: Chuck Reed, Oversight Board Chair, City of San Jose
Abraham Andrade, Oversight Board Member, City of San Jose
John Guthrie, Oversight Board Member, County of Santa Clara
Emily Harrison, Oversight Board Member, County of Santa Clara
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Vinod Sharma, Director of Finance, County of Santa Clara
John Chiang, California State Controller
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Exhibit 4



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Marne S. Sussman
tel 415.983.1916
marne.sussman@pillsburylaw.com

June 26, 2013

Via Email

Honorable Members of the Oversight Board
San Jose City Hall
200 E. Santa Clara Street
San Jose, CA 95113

Re: June 27, 2013 Agenda Item 7.1: Asset Transfers Update Report

Dear Members of the Oversight Board:

This letter is submitted on behalf of Stand For San Jose, a coalition of entities and individuals who are vitally concerned with the City's future and seek to ensure that issues critical to taxpayers, jobs, local businesses and neighborhoods are put first as the City evaluates proposed development projects that have the potential to significantly impact the City's way of life. On December 2, 2011, Stand For San Jose filed suit challenging the San Jose City Council's approval of the Option Agreement between Athletics Investment Group, LLC ("AIG") and the Diridon Development Authority ("DDA") dated as of November 8, 2011 (the "Option Agreement") for the sale of certain parcels in the Diridon area of San Jose ("Diridon property"). This action also challenged the Environmental Impact Report ("EIR") certified for the project.

Stand For San Jose submits this letter in response to the Oversight Board's Agenda Item 7.1 regarding the transfer of the Diridon property from the DDA to the Successor Agency pursuant to the State Controller's Asset Transfer Review Report ("Controller's Report"). Stand For San Jose objects to the Successor Agency's treatment of the Option Agreement as an enforceable obligation and urges the Oversight Board to reject the Successor Agency's determination that the Diridon property should be accepted subject to the Option Agreement.

The Option Agreement is not an enforceable obligation and is void and of no legal effect for the following reasons:

June 26, 2013
Via Email

Page 2

- The State Controller's order that the DDA return the Diridon property to the Successor Agency demonstrates that the property was transferred from the former Redevelopment Agency to the DDA in violation of Redevelopment Law. Because this initial transfer was illegal, the DDA did not validly control the Diridon property at the time it entered into the Option Agreement and the DDA did not have authority to enter into the Option Agreement. As a result, the Option Agreement is not an enforceable obligation of the Successor Agency. As the Oversight Board must direct the Successor Agency to terminate all existing agreements that do not qualify as enforceable obligations, the Oversight Board must direct the Successor Agency to terminate the Option Agreement.
- The EIR prepared for the proposed baseball stadium project to be constructed at the Diridon property is inadequate under the California Environmental Quality Act ("CEQA"). Valid CEQA review is required before such an Option Agreement can be approved and without an adequate EIR the Option Agreement is void.
- The Option Agreement involves the use of public funds to develop a ballpark, an action which requires a public vote under the San Jose Municipal Code; however, no such vote was taken. San Jose Municipal Code § 4.95 prohibits the City from participating in the building of a sports facility using tax dollars unless such expenditure is first approved by a majority vote of San Jose voters. By approving an Option Agreement in which AIG would receive a 50 percent discount from the then-current fair market value on the Diridon property, the City effectively used public funds to participate in the development of a private ballpark without the mandatory public vote.
- The Controller's Report ordered the City to return the Diridon property from the DDA (which received the Diridon property from the now-dissolved Redevelopment Agency) to the City's Successor Agency. Allowing the Successor Agency to accept return of the Diridon property subject to the Option Agreement would not comply with the Controller's Report. The Controller's Report ordered the Diridon property returned, not the Diridon property returned subject to the Option Agreement.

Treating the Option Agreement as an enforceable obligation would result in a significant loss of revenue to the City and its public services, including the schools and other relevant taxing agencies represented by the Oversight Board. Under the Option Agreement, AIG has the option to purchase the Diridon property for approximately \$7 million, despite the fact that the property was appraised at approximately \$14 million at the time the Option Agreement was entered into and is

June 26, 2013
Via Email


Page 3

listed as having a 2013 book value of approximately \$29 million in the Controller's Report. Thus, the taxing entities that receive distributions from the Successor Agency stand to lose approximately \$22 million if the Oversight Board validates the Option Agreement. This revenue should be used to improve our local communities rather than to subsidize AIG's development of a private ballpark.

Finally, the Oversight Board's approval of the Successor Agency's determination that the Diridon property should be accepted subject to the Option Agreement is in and of itself subject to CEQA review. In this instance, a categorical exemption does not suffice for CEQA review as there is evidence that the action may have an impact on the environment. In addition, the Oversight Board cannot rely on the previous EIR prepared for the Option Agreement and sale of the Diridon property as it is inadequate, and thus further CEQA review is required.

For these reasons, the Oversight Board should reject the Successor Agency's determination that the Diridon property be accepted subject to the Option Agreement and declare that the Option Agreement is not an enforceable obligation and is not binding on the Successor Agency.

Sincerely yours,


Marne S. Sussman

cc: Chuck Reed, Oversight Board Chair, City of San Jose
Abraham Andrade, Oversight Board Member, City of San Jose
John Guthrie, Oversight Board Member, County of Santa Clara
Emily Harrison, Oversight Board Member, County of Santa Clara
Ed Maduli, Oversight Board Member, California Community Colleges
Micaela Ochoa, Oversight Board Member, Santa Clara County Office of Education
Tony Estremera, Oversight Board Member, Santa Clara Valley Water District
David Barry, Oversight Board Alternate, County of Santa Clara
Kelly Hyland, Oversight Board Alternate, City of San Jose
Nimrat Johal, Oversight Board Alternate, Santa Clara County Office of Education
Pierluigi Oliverio, Oversight Board Alternate, City of San Jose
David Snow, Oversight Board Alternate, County of Santa Clara
Debra Figone, Successor Agency Executive Director
Richard Doyle, Successor Agency General Counsel
Vinod Sharma, Director of Finance, County of Santa Clara
John Chiang, California State Controller
Ana Matosantos, Director, California Department of Finance

Exhibit 11

OVERSIGHT BOARD - SUCCESSOR AGENCY TO THE SAN JOSE REDEVELOPMENT AGENCY

AGENDA

THURSDAY, FEBRUARY 13, 2014 – 8:30 Closed Session/9:00 A.M.

SAN JOSE CITY HALL – COUNCIL CHAMBERS
200 E. SANTA CLARA STREET, SAN JOSE, CA 95113

MEMBERS:

Chuck Reed, Chair, City of San Jose
Abraham Andrade, City of San Jose
John Guthrie, County of Santa Clara
Emily Harrison, County of Santa Clara
Ed Maduli, California Community Colleges
Micaela Ochoa, Santa Clara County Office of
Education
Tony Estremera, Santa Clara Valley Water District

ALTERNATE MEMBERS:

David Barry, County of Santa Clara
Kelly Hyland, City of San Jose
Nimrat Johal, Santa Clara County
Office of Education
Pierluigi Oliverio, City of San Jose
David Snow, County of Santa Clara

STAFF:

Ed Shikada, Successor Agency Executive Officer
Richard Doyle, Successor Agency General Counsel
Richard Keit, Successor Agency Managing Director
Julia Cooper, Successor Agency Chief Financial Officer

ORDER OF BUSINESS

1. CALL TO ORDER

2. CLOSED SESSION

Item 2 Supplemental Memorandum, February 11, 2014

Place: City Hall, Conference Room W-133
Time: 8:30 a.m.

Item(s) to be discussed:

CONFERENCE WITH CONFLICTS COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1):

Case Name: Stand for San Jose, et al. v. City, et al.

Name(s) of Parties(s) Involved: STAND FOR SAN JOSE; EILEEN HANNAN;
MICHELLE BRENOT; ROBERT BROWN; AND
ROBERT SHIELDS; CITY OF SAN JOSE; CITY
COUNCIL OF THE CITY OF SAN JOSE;
SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF
SAN JOSE; SUCCESSOR AGENCY
OVERSIGHT BOARD; DIRIDON DEVELOPMENT
AUTHORITY; DOES 1 through 10, inclusive;
ATHLETICS INVESTMENT GROUP, LLC; DOES
11 through 20, inclusive.

Court: Santa Clara County Superior Court

Case No.: 1-13-CV-250372

Amount of Money or Writ of Mandamus and Complaint for Declaratory
Other Relief Sought: Relief and Injunctive Relief and for Attorney's
Fees

3. ADOPTION OF AGENDA

4. APPROVAL OF MINUTES - From January 30, 2014 Meeting

5. CONSENT CALENDAR – None

6. ITEMS SCHEDULED FOR ACTION/DISCUSSION

6.1 Long-Range Property Management Plan (LRPMP) Approval

Adopt a resolution:

Supplemental Memorandum, February 12, 2014

County of Santa Clara Memorandum on LRPMP

Approving the Long Range Property Management Plan

6.2 Approval of the Property Disposition Process

Adopt a resolution:

County of Santa Clara Memorandum – Property Disposition

Approving a Property Disposition Process for the disposition of Successor
Agency owned properties designated for sale in the Long Range Property
Management Plan.

6.3 Presentation and Discussion of ROPS 14-15A

Presentation and Discussion of Proposed July – December 2014 Administrative
Budget and Draft Recognized Obligation Payment Schedule 14-15A

7. REPORTS and CORRESPONDENCE

8. FUTURE AGENDA ITEMS

9. OPEN FORUM

*Members of the Public are invited to speak on any item that does not appear on this
Agenda and that is within the subject matter jurisdiction of the Oversight Board.
Speakers may be limited to no more than two (2) minutes at the discretion of the Chair.*

10. ADJOURNMENT

The next Regular Oversight Board meeting will be held on February 27, 2014 at 9:00 a.m.

Oversight Board meetings will be held at San Jose City Hall located at 200 E. Santa Clara Street, San José, CA 95113.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the Oversight Board will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street Wing, San José, CA 95113 at the same time that the public records are distributed or made available to the Oversight Board.

To request an accommodation or alternative format for an Oversight Board meeting or printed materials, please call 408-535-1252 or

OVERSIGHT BOARD AGENDA
February 13, 2014
Page 3

(408) 294-9337 (TTY) as soon as possible, but at least three business days before the meeting.
--

Exhibit 6



Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor | San Francisco, CA 94111-5898 | tel 415.983.1000 | fax 415.983.1200
MAILING ADDRESS: P. O. Box 2824 | San Francisco, CA 94126-2824

Paul C. Levin
tel 415.983.1876
paul.levin@pillsburylaw.com

September 25, 2013

Via Email and U.S. Mail

Honorable Members of the Oversight Board
San Jose City Hall
200 E. Santa Clara Street
San Jose, CA 95113

Re: September 26, 2013 Agenda Item 6.4: Presentation of the Proposed
Long-Range Property Management Plan

Dear Members of the Oversight Board:

This letter is submitted on behalf of Stand For San Jose, Eileen Hannan, Michelle Brenot, Robert Brown, Karen Shirey, Fred Shirey and Robert Shields (together, "Petitioners"), who are concerned with the City's future and seek to ensure that issues critical to taxpayers, jobs, local businesses and neighborhoods are put first as the City evaluates proposed development projects that have the potential to significantly impact the City's way of life.¹

Petitioners submit this letter in response to the Oversight Board's Agenda Item 6.4 regarding the proposed Long-Range Property Management Plan (the "Plan") governing the disposition of the real property held by the Successor Agency. The Oversight Board must reject the Plan as presented by staff because the Plan

¹ On December 2, 2011, Petitioners filed suit challenging the San Jose City Council's approval of the Option Agreement between the Athletics Investment Group, LLC ("AIG") and the Diridon Development Authority ("DDA"), dated as of November 8, 2011 (the "Option Agreement"), for the sale of certain parcels in the Diridon area of San Jose for a baseball stadium project. On July 30, 2013, Petitioners filed a second suit challenging the retransfer of the same property in the Diridon area to the Successor Agency to the Redevelopment Agency of the City of San Jose ("Successor Agency") in a manner "subject to" and encumbered by the Option Agreement. These actions also challenged the Environmental Impact Report ("EIR") certified for the project.

September 25, 2013
Via Email and U.S. Mail

Page 2

improperly lists five properties (105 S. Montgomery Street, 150 S. Montgomery Street, 102 S. Montgomery Street, 115 S. Autumn Street and 645 Park Avenue, together referred to herein as the "Diridon Property") as "Properties to Fulfill an Enforceable Obligation", implying that the Option Agreement is an enforceable obligation when it is not an enforceable obligation. Instead, the Diridon Property must be listed in the Plan under the heading "Properties for Sale", with correspondent changes made to the individual descriptions of each of the Diridon Properties, and the Diridon Property must be sold by the Successor Agency to the highest bidder.

As described in Petitioners' letters to the Oversight Board dated June 26, 2013 and August 21, 2013, the Option Agreement is not an enforceable obligation for the following reasons:

- The State Controller's order that the DDA return the Diridon Property to the Successor Agency demonstrates that the Diridon Property was transferred from the former Redevelopment Agency to the DDA in violation of § 34167.5 of the California Health & Safety Code (the "Code"). Because this initial transfer to the DDA was unauthorized, the DDA (itself a joint venture controlled by the City) gained no rights and did not validly own or control the Diridon Property or have authority to enter into the Option Agreement as of November 2011. Furthermore, the belated entry into the Option Agreement by the DDA did not make the transaction one outside the reach of § 34167.5, since there was no third-party contract in existence at the time AB 26 came into effect, as the Controller has ruled already. As a result, the Option Agreement was unauthorized and cannot be seen or recognized as an enforceable obligation of the Successor Agency.
- Since the Successor Agency may only comply with enforceable obligations pursuant to § 34177(c) of the Code, and the Option Agreement is not an enforceable obligation, the Successor Agency is under a legal duty to determine that the Option Agreement is unauthorized and unenforceable. This works no breach of contract or hardship with regard to AIG, as AIG took the Option Argument subject to, and with the full knowledge of, the operation of all laws then in effect and bearing on the purported agreement, including of course the Code. Further, we note that the Oversight Board is under its own mandatory duty in the Code to direct the Successor Agency to cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations. See § 34181(b). The Oversight Board fails in its duty by failing to address and correct this issue.
- The EIR prepared for the proposed baseball stadium project to be constructed on the Diridon Property, certified in 2011, is inadequate under the California

September 25, 2013
Via Email and U.S. Mail


Page 3

Environmental Quality Act ("CEQA"). Valid CEQA review was required before such an Option Agreement could be approved, and without an adequate EIR, the Option Agreement was void and unenforceable for this reason as well.

- The Option Agreement involves the use of public funds to develop a ballpark, an action which requires a public vote under the San Jose Municipal Code; however, no such vote was taken. San Jose Municipal Code § 4.95 prohibits the City from participating in the building of a sports facility using tax dollars unless such expenditure is first approved by a majority vote of San Jose voters. By approving an Option Agreement in which AIG would receive a 50 percent discount from the then-current fair market value on the Diridon Property, the City effectively used public funds to participate in the development of a private ballpark without the mandatory public vote.
- The Controller's Report ordered the City to return the Diridon Property from the DDA (which received the Diridon Property from the now-dissolved Redevelopment Agency) to the Successor Agency. Listing the Diridon Property in the Plan as property encumbered by an enforceable obligation and implying that the Successor Agency holds the Diridon Property "subject to" the Option Agreement fails to comply with the Controller's Report.

The Oversight Board must determine that the Diridon Property cannot be included in the Plan as property that will be used to fulfill an enforceable obligation because the Option Agreement is not an enforceable obligation. Instead, the Diridon Property should be listed in the Plan as "Properties for Sale" and should be sold to the highest bidder, allowing the full market value of the Diridon Property to be used to improve our community.

Very truly yours,



Paul C. Levin

cc: Chuck Reed, Oversight Board Chair, City of San Jose
Abraham Andrade, Oversight Board Member, City of San Jose
John Guthrie, Oversight Board Member, County of Santa Clara
Emily Harrison, Oversight Board Member, County of Santa Clara
Ed Maduli, Oversight Board Member, California Community Colleges
Micaela Ochoa, Oversight Board Member, Santa Clara County Office of Education
Tony Estremera, Oversight Board Member, Santa Clara Valley Water District

September 25, 2013
Via Email and U.S. Mail

Page 4

David Barry, Oversight Board Alternate, County of Santa Clara
Kelly Hyland, Oversight Board Alternate, City of San Jose
Nimrat Johal, Oversight Board Alternate, Santa Clara County Office of Education
Pierluigi Oliverio, Oversight Board Alternate, City of San Jose
David Snow, Oversight Board Alternate, County of Santa Clara
Debra Figone, Successor Agency Executive Director
Richard Doyle, Successor Agency General Counsel
Vinod Sharma, Director of Finance, County of Santa Clara
John Chiang, California State Controller
Michael Cohen, Director, California Department of Finance

Exhibit 7



Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor | San Francisco, CA 94111-6999 | tel 415.983.1000 | fax 415.983.1200
MAILING ADDRESS: P. O. Box 2824 | San Francisco, CA 94120-2824

Paul C. Levin
tel 415.983.1876
paul.levin@pillsburylaw.com

October 9, 2013

Via Email and U.S. Mail

Honorable Members of the Oversight Board
San Jose City Hall
200 E. Santa Clara Street
San Jose, CA 95113

Re: October 10, 2013 Agenda Item 6.3: Presentation of the Proposed
Long-Range Property Management Plan

Dear Members of the Oversight Board:

This letter is submitted on behalf of Stand For San Jose, Eileen Hannan, Michelle Bronot, Robert Brown, Karen Shirey, Fred Shirey and Robert Shields (together, "Petitioners").¹ Petitioners submit this letter in response to the Oversight Board's Agenda Item 6.3 regarding the proposed Long-Range Property Management Plan (the "Plan") governing the disposition of real property held by the Successor Agency.

We submit that the Oversight Board has the duty to reject the Plan as presented by staff because the Plan improperly includes five properties² (referred to herein as the "Diridon Properties") as "Properties to Fulfill an Enforceable Obligation," resting on

¹ On December 2, 2011, Petitioners filed suit challenging the San Jose City Council's approval of the Option Agreement between the Athletics Investment Group, LLC ("AIG") and the Diridon Development Authority ("DDA"), dated as of November 8, 2011 (the "Option Agreement"), for the sale of certain parcels in the Diridon area of San Jose for a baseball stadium project. On July 30, 2013, Petitioners filed a second suit challenging the retransfer of the same property in the Diridon area to the Successor Agency to the Redevelopment Agency of the City of San Jose ("Successor Agency") in a manner "subject to" and encumbered by the Option Agreement. These actions also challenged the Environmental Impact Report ("EIR") certified for the project.

² 105 S. Montgomery Street, 150 S. Montgomery Street, 102 S. Montgomery Street, 115 S. Autumn Street and 645 Park Avenue.

the mistaken conclusion that the Option Agreement is a legally enforceable obligation when it is not. Instead, the Diridon Properties must be listed in the Plan under the heading "Properties for Sale", with correspondent changes made to the individual descriptions of each of the Diridon Properties, and they must be sold by the Successor Agency to the highest bidder.

Furthermore, the proposed Plan is incomplete because it does not include all of the information required for submission to and approval by the Department of Finance. The Department of Finance has posted on its website a Long-Range Property Management Plan Checklist (the "Checklist"), attached hereto as Exhibit A, that all Successor Agencies must follow when submitting their Plans. The Checklist requires each Successor Agency to provide specific information about each property included in the Plan, including the value of each property at the time it was acquired, an estimate of the current value of each property, the purpose for which the property was acquired, the history of environmental contamination at each property, the property's potential for transit-oriented development, and the advancement of the planning objectives of the Successor Agency. The draft Plan released to the public in advance of the October 10, 2013 Oversight Board meeting does not include this information. The Successor Agency must provide the Oversight Board with this information to allow the Oversight Board to consider and provide comments on the complete Plan.

As described in Petitioners' letters to the Oversight Board dated June 26, 2013, August 21, 2013 and September 25, 2013, the Option Agreement clearly is not an enforceable obligation for a number of reasons:

- The State Controller's order that the DDA return the Diridon Properties to the Successor Agency demonstrates that the Diridon Properties were transferred from the former Redevelopment Agency to the DDA in violation of § 34167.5 of the California Health & Safety ("H&S") Code. Because this initial transfer to the DDA was unauthorized, the DDA (a joint venture controlled by the City) obtained no rights and did not validly own or control the Diridon Properties or have authority to enter into the Option Agreement as of November 2011. Furthermore, the belated entry into the Option Agreement by the DDA did not make the transaction one outside the reach of § 34167.5, since there was no third-party contract in existence at the time AB 26 came into effect, as the Controller has already ruled. As a result, it is beyond legitimate argument that the Option Agreement was unauthorized and it cannot be seen or recognized as an enforceable obligation of the Successor Agency.
- Since the Successor Agency may only perform and carry out enforceable obligations pursuant to § 34177(c) of the Code, and the Option Agreement is

not an enforceable obligation, the Successor Agency is under a legal duty to determine that the Option Agreement is unauthorized and unenforceable. The Oversight Board is under its own mandatory duty to direct the Successor Agency to cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations. See §34181(b). This works no breach of contract or hardship with regard to AIG, as AIG took the Option Agreement subject to, and with the full knowledge of, the operation of all laws then in effect and bearing on the purported agreement.

- The EIR prepared several years ago for the proposed baseball stadium project to be constructed on the Diridon Properties, certified in 2011, is plainly inadequate under the California Environmental Quality Act ("CEQA"). Valid CEQA review was required before such an Option Agreement could be approved, and the Option Agreement was void and unenforceable for this reason as well.
- The Option Agreement involves the use of public funds to develop a ballpark, an action which requires a public vote under the San Jose Municipal Code; however, no such vote was taken. San Jose Municipal Code § 4.95 prohibits the City from participating in the building of a sports facility using tax dollars unless such expenditure is first approved by a majority vote of San Jose voters. By approving an Option Agreement in which AIG would receive a 50 percent discount from the then-current fair market value on the Diridon Property, in effect the City is using public funds to participate in the development of a private ballpark without the mandatory public vote.
- The Controller's Report ordered the City to return the Diridon Properties from the DDA (which received the Diridon Properties from the now-dissolved Redevelopment Agency) to the Successor Agency. Listing the Diridon Properties in the Plan as property encumbered by an enforceable obligation and implying that the Successor Agency holds the Diridon Property "subject to" the Option Agreement fails to comply with the Controller's Report.

We submit that the Oversight Board, in the exercise of its duties under law, cannot continue to duck this issue. The Oversight Board must determine that the Diridon Properties cannot be included in the Plan as property that will be used to fulfill an enforceable obligation. Instead, the Diridon Property should be listed in the Plan as "Properties for Sale" and should be sold to the highest bidder, allowing the full market value of the Diridon Property to be used to improve our community.

Honorable Members of the Oversight Board
October 9, 2013
Page 4

Very truly yours,


Paul C. Levin

cc: Chuck Reed, Oversight Board Chair, City of San Jose
Abraham Andrade, Oversight Board Member, City of San Jose
John Guthrie, Oversight Board Member, County of Santa Clara
Emily Harrison, Oversight Board Member, County of Santa Clara
Ed Madull, Oversight Board Member, California Community Colleges
Micaela Ochoa, Oversight Board Member, Santa Clara County Office of Education
Tony Estremera, Oversight Board Member, Santa Clara Valley Water District
David Barry, Oversight Board Alternate, County of Santa Clara
Kelly Hyland, Oversight Board Alternate, City of San Jose
Nimrat Johal, Oversight Board Alternate, Santa Clara County Office of Education
Pierluigi Oliverio, Oversight Board Alternate, City of San Jose
David Snow, Oversight Board Alternate, County of Santa Clara
Debra Elgone, Successor Agency Executive Director
Richard Doyle, Successor Agency General Counsel
Vinod Sharma, Director of Finance, County of Santa Clara
John Chiang, California State Controller
Michael Cohen, Director, California Department of Finance

Exhibit A

DOF Long-Range Property Management Plan Checklist

[Attached]



LONG-RANGE PROPERTY MANAGEMENT PLAN CHECKLIST

Instructions: Please use this checklist as a guide to ensure you have completed all the required components of your Long-Range Property Management Plan. Upon completion of your Long-Range Property Management Plan, email a PDF version of this document and your plan to:

Redevelopment_Administration@dof.ca.gov

The subject line should state "[Agency Name] Long-Range Property Management Plan". The Department of Finance (Finance) will contact the requesting agency for any additional information that may be necessary during our review of your Long-Range Property Management Plan. Questions related to the Long-Range Property Management Plan process should be directed to (916) 445-1548 or by email to Redevelopment_Administration@dof.ca.gov.

Pursuant to Health and Safety Code 34191.5, within six months after receiving a Finding of Completion from Finance, the Successor Agency is required to submit for approval to the Oversight Board and Finance a Long-Range Property Management Plan that addresses the disposition and use of the real properties of the former redevelopment agency.

GENERAL INFORMATION:

Agency Name:

Date Finding of Completion Received:

Date Oversight Board Approved LRPMP:

Long-Range Property Management Plan Requirements

For each property the plan includes the date of acquisition, value of property at time of acquisition, and an estimate of the current value.

☐ Yes ☐ No

For each property the plan includes the purpose for which the property was acquired.

☐ Yes ☐ No

For each property the plan includes the parcel data, including address, lot size, and current zoning in the former agency redevelopment plan or specific, community, or general plan.

☐ Yes ☐ No

For each property the plan includes an estimate of the current value of the parcel including, if available, any appraisal information.

☐ Yes ☐ No

For each property the plan includes an estimate of any lease, rental, or any other revenues generated by the property, and a description of the contractual requirements for the disposition of those funds.

☐ Yes ☐ No

For each property the plan includes the history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts.

☐ Yes ☐ No

For each property the plan includes a description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.

☐ Yes ☐ No

For each property the plan includes a brief history of previous development proposals and activity, including the rental or lease of the property.

☐ Yes ☐ No

For each property the plan identifies the use or disposition of the property, which could include 1) the retention of the property for governmental use, 2) the retention of the property for future development, 3) the sale of the property, or 4) the use of the property to fulfill an enforceable obligation.

☐ Yes ☐ No

The plan separately identifies and list properties dedicated to governmental use purposes and properties retained for purposes of fulfilling an enforceable obligation.

☐ Yes ☐ No

ADDITIONAL INFORMATION

- If applicable, please provide any additional pertinent information that we should be aware of during our review of your Long-Range Property Management Plan.

Agency Contact Information

Name:

Name:

Title:

Title:

Phone:

Phone:

Email:

Email:

Date:

Date:

Department of Finance Local Government Unit Use Only

DETERMINATION ON LRPMP ☐ APPROVED ☐ DENIED

APPROVED/DENIED BY _____ DATE _____

APPROVAL OR DENIAL LETTER PROVIDED ☐ YES ☐ NO DATE AGENCY NOTIFIED _____

Exhibit 8



Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor | San Francisco, CA 94111-5998 | tel 415.983.1000 | fax 415.983.1200
MAILING ADDRESS: P. O. Box 2824 | San Francisco, CA 94126-2824

Marne S. Sussman
tel 415.983.1916
marne.sussman@pillsburylaw.com

January 8, 2014

Via Email and U.S. Mail

Honorable Members of the Oversight Board
San Jose City Hall
200 E. Santa Clara Street
San Jose, CA 95113

Re: January 9, 2013 Agenda Item 6.2: Review of Long-Range Property
Management Plan (LRPMP)

Dear Oversight Board Members:

This letter is submitted on behalf of Stand For San Jose, Eileen Hannan, Michelle Brenot, Robert Brown, Karen Shirey, Fred Shirey and Robert Shields (together, "Petitioners").¹ Petitioners submit this letter in response to the Oversight Board's Agenda Item 6.2 regarding the proposed Long-Range Property Management Plan (the "Plan") governing the disposition of real property held by the Successor Agency.

We submit that the Oversight Board has the duty to reject the Plan as presented because it improperly includes five properties (referred to herein as the "Diridon

¹ On December 2, 2011, Petitioners filed suit challenging the San Jose City Council's approval of the Option Agreement between the Athletics Investment Group, LLC ("AIG") and the Diridon Development Authority ("DDA"), dated as of November 8, 2011 (the "Option Agreement"), for the sale of certain parcels in the Diridon area of San Jose for a baseball stadium project. On July 30, 2013, Petitioners filed a second suit challenging the retransfer of the same property in the Diridon area to the Successor Agency to the Redevelopment Agency of the City of San Jose ("Successor Agency") in a manner "subject to" and encumbered by the Option Agreement. These actions also challenged the Environmental Impact Report ("EIR") certified for the project, and the City's failure to hold a public vote as required by San Jose Municipal Code section 4.95 on whether to subsidize the ballpark project.

Properties")² as "Properties to Fulfill an Enforceable Obligation," resting on the mistaken conclusion that the Option Agreement is a legally enforceable obligation when it is not.

Instead, the Diridon Properties must be listed in the Plan under the heading "Properties for Sale", with corresponding changes made to the individual descriptions of each of the Diridon Properties, and they must be sold by the Successor Agency to the highest bidder.

Previously, Petitioners have submitted a number of letters to the Oversight Board (dated June 26, 2013, August 21, 2013, September 25, 2013, and October 9, 2013), providing substantial reasons why the Option Agreement is not a legally enforceable obligation. Despite these letters, the staff continues to ignore the issue and thus the public receives no explanation regarding why the Oversight Board would be acting in a lawful manner if it follows the staff recommendation. This "head in the sand" approach is a disservice to the public, which is entitled to understand the Successor Agency's reasons for proposing to take an action that is challenged as illegal for a number of reasons:

- The State Controller's order that the DDA return the Diridon Properties to the Successor Agency establishes that the Diridon Properties were transferred from the former Redevelopment Agency to the DDA in violation of § 34167.5 of the California Health & Safety ("H&S") Code. Because this initial transfer to the DDA was unauthorized, the DDA (a joint venture controlled by the City) obtained no rights to the parcels, did not validly own or control the Diridon Properties, and did not have authority to enter into the Option Agreement. Furthermore, the belated entry into the Option Agreement by the DDA did not make the transaction one outside the reach of § 34167.5, since there was no third-party contract in existence at the time AB 26 came into effect on June 28, 2011, as the Controller has already determined. As a result, it is clear that the Option Agreement was unauthorized and it cannot be recognized as an enforceable obligation of the Successor Agency.
- Since the Successor Agency may only perform and carry out enforceable obligations pursuant to § 34177(c) of the Code, and the Option Agreement is not an enforceable obligation, the Successor Agency is under a legal duty to

² 105 S. Montgomery Street, 150 S. Montgomery Street, 102 S. Montgomery Street, 115 S. Autumn Street, and 645 Park Avenue.

determine that the Option Agreement is unauthorized and unenforceable. Furthermore, the Oversight Board is under its own mandatory duty to direct the Successor Agency to cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations. See § 34181(b). This works no breach of contract or hardship with regard to AIG, as AIG took the Option Agreement subject to, and with the full knowledge of, the operation of all laws then in effect and bearing on the purported agreement.

- The EIR prepared several years ago for the proposed baseball stadium project to be constructed on the Diridon Properties, certified in 2011, is inadequate under the California Environmental Quality Act ("CEQA"). Lawful compliance with CEQA was required before the Option Agreement could be approved, and the Option Agreement is void and unenforceable for this reason as well.
- The Option Agreement involves the use of public funds to develop a ballpark, an action which requires a public vote under the San Jose Municipal Code; however, no such vote was taken. San Jose Municipal Code § 4.95 prohibits the City from participating in the building of a sports facility using tax dollars unless such expenditure is first approved by a majority vote of San Jose voters. By approving an Option Agreement in which AIG would receive a 50 percent discount from the then-current fair market value of the Diridon Properties, in effect the City is using public funds to participate in the development of a private ballpark without the prior mandatory public vote.
- The Controller's Report ordered the City to return the Diridon Properties from the DDA (which received the Diridon Properties from the now-dissolved Redevelopment Agency) to the Successor Agency. Listing the Diridon Properties in the Plan as property encumbered by an enforceable obligation, and implying that the Successor Agency holds the Diridon Properties "subject to" the Option Agreement, fails to comply with the mandates of the Controller's Report.

In addition, we point out that the proposed Plan is inaccurate and misleading in describing the value of the Diridon Properties. Page 73 of the Plan states that the properties were appraised in September 2010 as an assembled site for the development of a Major League Baseball Stadium at the value of \$6,975,227. In fact, according to the September 2010 appraisal, the "highest and best use value for the Property" at that time was \$13,970,000. The much lower figure, \$6,975,227, was the value if the Diridon Properties could be used only for a ballpark. See Oct. 24, 2011

January 8, 2014

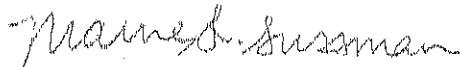
Page 4

Staff Report, p. 5 (enclosed). Without a "baseball-only" deed restriction, the value of the Diridon Properties was nearly \$14 million in September 2010.

The Plan's treatment of the Diridon Properties is also flawed because it relies on an appraisal value from 2010, rather than "an estimate of the current value of the property," as required by Health & Safety Code § 34191.5. The Oversight Board must obtain a new appraisal of the Diridon Properties valued at their highest and best use so that current value can be considered. Even without completing a new appraisal of the Diridon Properties, it is clear that their current fair market value is much higher than it was four years ago, at the near-bottom of the Bay Area real estate market, given the substantial recovery of the San Jose real estate market and economy which has been observed since that time.

We respectfully submit that the Oversight Board, in the exercise of its duties under law, cannot continue to ignore this issue. To this point, the Oversight Board has failed to address any of the questions and comments on the Plan and the unenforceability of the Option Agreement. We believe the Oversight Board must determine that the Diridon Properties cannot be included in the Plan as properties that will be used to fulfill an enforceable obligation. Instead, the Diridon Properties should be listed as "Properties for Sale" and should be sold to the highest bidder, allowing the full market value of the Diridon Properties to be used to improve the San Jose community.

Sincerely,



Marne S. Sussman

Enclosure

cc: Chuck Reed, Oversight Board Chair, City of San Jose
Abraham Andrade, Oversight Board Member, City of San Jose
John Guthrie, Oversight Board Member, County of Santa Clara
Emily Harrison, Oversight Board Member, County of Santa Clara
Ed Maduli, Oversight Board Member, California Community Colleges
Micaela Ochoa, Oversight Board Member, Santa Clara County Office of Education
Tony Estremera, Oversight Board Member, Santa Clara Valley Water District
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Kelly Hyland, Oversight Board Alternate, City of San Jose
Nimrat Johal, Oversight Board Alternate, Santa Clara County Office of Education
Pierluigi Oliverio, Oversight Board Alternate, City of San Jose

January 8, 2014
Page 5

David Snow, Oversight Board Alternate, County of Santa Clara
Debra Figone, Successor Agency Executive Director
Richard Doyle, Successor Agency General Counsel
Vinod Sharma, Director of Finance, County of Santa Clara
John Chiang, California State Controller
Michael Cohen, Director, California Department of Finance

EXHIBIT C

Exhibit 9



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January 29, 2014

Via Email and U.S. Mail
(cityclerk@sanjoseca.gov)

Honorable Members of the Oversight Board
San Jose City Hall
200 E. Santa Clara Street
San Jose, CA 95113

Re: January 30, 2014 Agenda Item 6.1: Review and Discussion of the Draft
Long-Range Property Management Plan (LRPMP)

Dear Members of the Oversight Board:

This letter is submitted on behalf of Stand For San Jose, Eileen Hannan, Michelle Brenot, Robert Brown, Karen Shirey, Fred Shirey and Robert Shields (collectively, "Petitioners") in response to the Oversight Board's Agenda Item 6.1 regarding the draft Long-Range Property Management Plan (the "LRPMP") governing the disposition of real property held by the Successor Agency to the San Jose Redevelopment Agency ("Successor Agency").¹

We submit, as we have before, that the Oversight Board has the duty to reject the LRPMP insofar as it includes five properties² (referred to here as the "Diridon Properties") as "Properties to Fulfill an Enforceable Obligation," resting on the mistaken conclusion that the Option Agreement is a legally enforceable obligation when it is not. Instead, the Diridon Properties must be listed in the LRPMP as "Properties for Sale" and sold by the Successor Agency to the highest bidder. In

¹ Petitioners have previously submitted letters to the Oversight Board dated June 26, 2013, August 21, 2013, September 25, 2013, October 9, 2013, and January 8, 2014.

² 105 S. Montgomery Street, 150 S. Montgomery Street, 102 S. Montgomery Street, 115 S. Autumn Street and 645 Park Avenue.

addition, the Board cannot wait for the court to decide this issue as the lawsuit has been stayed at the request of the City Attorney's office until this Board acts.

Background.

In January 2011, Governor Jerry Brown announced his intent to eliminate redevelopment agencies in California. In March 2011, in anticipation of the new redevelopment law, the City and Redevelopment Agency formed the Diridon Development Authority ("DDA") as a joint powers authority and transferred the Diridon Properties to the DDA at no cost.

On June 28, 2011 Governor Brown signed AB 26, the bill to eliminate redevelopment agencies. AB 26 (codified at Health & Safety Code §§ 34161 *et seq*) provides that any asset transfer after January 1, 2011 between any redevelopment agency and the "city ... that created a redevelopment agency or any other public agency" is "deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Health & Safety Code § 34167.5. If any such transfer occurred, and the government agency that received the assets was not contractually committed to a third party for the encumbrance of those assets by June 28, 2011, the State Controller must order the assets to be returned and the local agency is required to return the assets to the successor agency. *Ibid*.

After AB 26 was passed, the City and others challenged the law in the California Supreme Court. On November 8, 2011, the City Council and the DDA, in joint session, voted to encumber the Diridon Properties with an Option Agreement to sell the properties to Athletics Investment Group, LLC ("AIG"). By "encumbering" the properties with an option granted to a private party, the City and the DDA hoped to avoid the re-transfer of the Diridon Properties to the Successor Agency as mandated by § 34167.5, assuming the Supreme Court were to uphold the law. On December 29, 2011, the California Supreme Court issued its opinion in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, upholding the validity of AB 26.

The Transfer of the Diridon Properties to the DDA was Unauthorized.

The transfer of the Diridon Properties to the DDA in March 2011 plainly violated § 34167.5 which deems any transfer of assets between a redevelopment agency and "any other public agency" after January 1, 2011 as unauthorized. The DDA could not and did not obtain any rights to the parcels, did not validly own or control the parcels, and did not have authority later in November to enter into the Option Agreement. The Option Agreement did not make the transaction outside the reach of section 34167.5 since there was no third-party contract in existence at the time AB 26 came into effect on June 28, 2011.

The Option Agreement is Not an Enforceable Obligation.

An enforceable obligation includes only "legally binding and enforceable agreement[s] or contract[s]". Health & Safety Code § 34167(d)(5). Because the transfer of the Diridon Properties to the DDA was unauthorized to begin with, the DDA had no authority to encumber the Diridon Properties pursuant to the Option Agreement.³

The Option Agreement is also void and unenforceable because it was entered into after June 28, 2011. Under Health & Safety Code section 34167.5, a government agency that received assets from a redevelopment agency must have been contractually committed to a third party for the encumbrance of those assets by June 28, 2011. *See also* Health & Safety Code § 34177.3(a).⁴

The Controller Has Already Determined the Property Transfer Was Invalid and the Option Agreement is Void.

In March 2013, the State Controller determined that the March 2011 transfer of the Diridon Properties from the Redevelopment Agency to the DDA was not an allowable transaction: "Pursuant to H&S Code section 34167.5, a redevelopment agency may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e). . . ." State Controller's Report at 6.

The Controller also rejected the argument that the Properties were "contractually committed" to AIG: "The [Diridon Properties] were not contractually committed to a third party prior to June 28, 2011. . . ." *Ibid.* at 6.

³ In addition, the purported extension of the Option Agreement by the Successor Agency in September 2013 was invalid. Under Health & Safety Code section 34177.3(a), "Successor agencies shall lack the authority to, and shall not, create new enforceable obligations under the authority of the Community Redevelopment Law (Part 1 (commencing with Section 33000)) or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011." The Successor Agency's consent to the extension of the Option Agreement—if any such consent was actually obtained—would have created a new enforceable obligation for the Successor Agency post-June 28, 2011 and would thus be void.

⁴ There are other reasons why the Option Agreement is invalid, including that the EIR prepared several years ago for the proposed baseball stadium project to be constructed on the Diridon Properties is inadequate under the California Environmental Quality Act ("CEQA") and that the Option Agreement involves the use of public funds to develop a ballpark despite the fact that no public vote was taken to support this action, as required by San Jose Municipal Code § 4.95. These arguments are explained in more detail in Enclosure A to this letter which is the Verified First Amended Petition and Complaint in the Stand for San Jose lawsuit, Case No. 1:11-CV-214196.

Mandatory Duty of the Oversight Board.

The Oversight Board is under a mandatory duty to direct the Successor Agency to cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations. Health & Safety Code § 34181(b). Thus, the Oversight Board must find that the Diridon Properties are not subject to an enforceable obligation and must list them as "Properties for Sale" in the LRPMP.

The Stand for San Jose Lawsuit Has Been Stayed at the City's Urging. Pending the Decision by the Oversight Board on the LRPMP.

Contrary to what the City Attorney's office reported at the last Board meeting, the Stand for San Jose lawsuit is not currently proceeding and in fact has been stayed since June 5, 2013. In late May 2013, the City Attorney's office advised Petitioners that the DDA intended to comply with the Controller's Order and return the Diridon Properties to the Successor Agency. Because there was uncertainty regarding the actions that could be taken by the Successor Agency, the Oversight Board, and the Department of Finance which could make the case moot, the City requested that Petitioners stipulate to vacate the briefing schedule in the case. Since that time, the court has continued to stay the action, based on the City Attorney's assertion that it remains unclear whether the actions of the Oversight Board and/or the Department of Finance may cause the lawsuit to become moot.

For example, in its October 18, 2013 status report for Case Management Conference, City Attorney's office stated that

"[i]t remains unclear whether the Oversight Board and the Department of Finance will approve the LRPMP in its current form – with the Diridon Property being held subject to the Option Agreement as an enforceable obligation. Because the outcome of this process is uncertain, and because certain outcomes could result in this consolidated action becoming moot, Respondents recommend that the Court set this matter for a further Case Management Conference in mid-December."⁵
(Emphasis added.)

Thus, the City has consistently advised the court that the court should not make a determination on the question of whether the Option Agreement is an enforceable obligation at this time, because the Oversight Board and/or the Department of Finance must act first. Meanwhile, the Oversight Board has been advised to the contrary, that

⁵ This status report is included as Enclosure B to this letter.

the question of the enforceability of the Option Agreement will be decided in court and that the Board need not concern itself with the issue.

Regardless of this inconsistency, the correct statement is that the Board has a legal duty to address the issue of the enforceability of the Option Agreement, and in our view, to find that the Option Agreement is unenforceable for the reasons outlined above.

Conclusion

The Legislature stated that its intent in passing AB 26 was to make sure that "redevelopment agencies take no actions that would further deplete the corpus of the agencies' funds..." and stated that "all provisions [of AB 26] shall be construed as broadly as possible to support this intent and to restrict the expenditure of funds to the fullest extent possible." Health & Safety Code § 34167(a). Following the Legislature's direction, the Oversight Board has a duty under law to determine that the Diridon Properties are not properties that will be used to fulfill an enforceable obligation. Instead, the Diridon Properties should be listed in the LRPMP as "Properties for Sale" and should be sold to the highest bidder, allowing the full market value of the Diridon Properties to be used to improve our community.⁶

Sincerely,



Marne S. Sussman

Enclosures

cc: Chuck Reed, Oversight Board Chair, City of San Jose
Abraham Andrade, Oversight Board Member, City of San Jose

⁶ The LRPMP relies on an appraisal value of the Diridon Properties from 2010, rather than "an estimate of the current value of the property," as required by Health & Safety Code section 34191.5. The Oversight Board should obtain a new appraisal of the Diridon Properties at their highest and best use value so that the current value can be considered. AB 26's purpose is to preserve redevelopment agency assets and revenues for use by "local governments to fund core governmental services including police and fire protection services and schools." Health & Safety Code § 34167(a). Under the Option Agreement, the Diridon Properties would be sold to AIC for only \$6.9 million, despite the fact that they were acquired for \$25 million, appraised at \$14 million at the time of the Option Agreement, and listed as having a 2013 book value of approximately \$29 million in the Controller's Report. Thus, local taxing entities that would receive distributions from the Successor Agency upon a legitimate sale of the Properties—free from the encumbrance of the Option Agreement—stand to lose approximately \$22 million if the Option Agreement stands.

John Guthrie, Oversight Board Member, County of Santa Clara
Emily Harrison, Oversight Board Member, County of Santa Clara
Ed Madull, Oversight Board Member, California Community Colleges
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John Chiang, California State Controller
Michael Cohen, Director, California Department of Finance

Exhibit 10

TRANSCRIPT OF:
CITY OF SAN JOSE CITY OVERSIGHT BOARD MEETING
AGENDA ITEM 6.1
January 30, 2014

(via CD)

CERTIFIED COPY

Reported by: Josie Amant, CSR
License Number CSR-3390

1 CHAIR MAYOR REED: Item 6.1, the long-range
2 property management plan.

3 Staff, would you like to do that first or do
4 the approval of the property disposition process first,
5 considering we don't have the full Board here and I
6 think -- I understand staff is going to recommend that
7 we not take action today on the property disposition
8 process. I don't know if it makes sense to do one or
9 the other first.

10 MR. KEIT: Yeah, that's fine. We would like
11 to formally defer the item. We've had some discussions
12 with the County and we've been working very diligently
13 to come to a consensus. We're still off on two points
14 and Tom Ressa would like to speak to the item a bit,
15 just -- we want -- we would like to get it in front of
16 you to think about and then at the next meeting, we'll
17 bring it forward for approval with a -- with a redline
18 version of changes.

19 CHAIR MAYOR REED: Okay. Why don't we just
20 discuss this for a while then and --

21 MR. MURTHA: Right. As we -- as we sent out
22 the disposition process and as I mentioned at last
23 meeting, what we'd like to do is have a more detailed
24 disposition process that the Oversight Board actually
25 approves and it will relate to two -- two circumstances.

1 One, most of the properties that we will sell will be
2 through a solicitation process where we'll just solicit
3 bids from a wide group of people and we would select the
4 highest bid. The second would be whether there's
5 certain properties that the City is interested in buying
6 and/or nonprofits are interested in buying and we would
7 have an appraisal process for those properties and those
8 are shown -- will be shown on the long-range property
9 management plan.

10 So the disposition process in the long-range
11 property management plan will be a more simple process
12 for each property saying that either a solicitation will
13 be done pursuant to an Oversight Board-approved
14 disposition process and next -- and when we bring this
15 process forward next, the Board will approve that
16 process by resolution and that way it's -- it will
17 contain a lot more detail than really needs to be in the
18 long-range property management plan.

19 Briefly, the first, as I said, is an open and
20 competitive solicitation process. We plan to market the
21 properties for sale, there'll be a sixty-day due
22 diligence, we then expect -- we expect to include a form
23 purchase and sale agreement and a right-of-entry in each
24 solicitation. The bidders will, basically, put their
25 entity name, they'll put the purchase price and they'll

1 sign the purchase and sale agreement, send it back to us
2 and then what we've envisioned is a review, an
3 evaluation of those bids.

4 It was suggested by one of the Board members
5 on our walk-through to use an evaluation team. There's
6 been some discussion back and forth. What staff is
7 proposing is really an informal group of people who have
8 valuation experience, so to the extent there are -- the
9 entities, the County, the Water District, the School
10 Board, if they have people with that experience, we were
11 trying to get a small group, again, only advisory to us
12 as to whether the highest bid was a fair and reasonable
13 bid. Then the -- then the Successor Agency staff will
14 bring forward back to this Board the purchase and sale
15 agreement, if -- if we determine that it's the highest
16 bid and it's a reasonable bid based on the comps at that
17 time.

18 The Board -- the Oversight Board -- we want to
19 make it clear, the Oversight Board -- all this
20 information, any sale has to be approved by the
21 Oversight Board. We will -- when we bring any purchase
22 and sale agreement back to the Oversight Board, we will
23 -- we will let you know what all the bids were and how
24 we -- and how the decision was made to select it. We
25 assume it will be just because it's the highest.

1 So the other issue we also have, as I
2 mentioned, was properties for sale. We will -- we do
3 intend to have some properties where there will be an
4 appraisal done and then the evaluation team will review
5 to make sure the appraisal looks right. We would then
6 bring -- if there are certain properties that the City
7 or certain nonprofits are interested in buying directly,
8 we would then enter into -- the idea is an option
9 agreement which would allow some of them time to buy the
10 properties. If they elect to buy the properties,
11 basically, exercise would simply be depositing the
12 purchase price into an escrow and then we would close
13 and if that's not done during the option period, then we
14 would -- we would go out to sale through the
15 solicitation process.

16 We did -- we are providing for a ten-percent
17 deposit in the purchase and sale agreement so that if
18 the high bidder is -- if this Board approves the high
19 bid, at that point, we would sign -- the Successor
20 Agency would sign the purchase and sale agreement and
21 that -- we would close escrow within thirty days after
22 the purchase agreement is effective.

23 So right now, there's an issue between -- with
24 DOF about whether DOF has to approve each purchase and
25 sale agreement. I think we would say no, they don't

1 once they approve the long-range property management
2 plan. I believe from conversations we've had with other
3 lawyers that DOF is taking the position that they get to
4 approve again each purchase and sale agreement so what
5 would happen is this Board if it approved a purchase and
6 sale agreement, if that resolution goes to DOF, they
7 have their forty-day period and so it's after the
8 purchase and sale agreement -- thirty days after the
9 purchase and sale agreement becomes effective, we would
10 close, but by using that language, if DOF recognizes
11 that they don't have that authority, it would just be
12 thirty days after this Board approves it.

13 So unless there's any questions, what we plan
14 to do, as Richard mentioned, is defer this item to the
15 next meeting. We will provide you a redline version
16 from the -- from the version that's in your packet
17 showing the changes we made and then at the next
18 meeting, we would -- we would recommend approval.

19 CHAIR MAYOR REED: Okay. A couple of comments
20 that I had. One is in the approval of sale paragraph,
21 you mention going through the discussion that all bids
22 would be disclosed or listed or posted or given to us.
23 It doesn't say that specifically in that section and I
24 think I'd like to add that so it's clear that if
25 somebody puts in a bid, it's going to be a public record

1 and --

2 MR. MURTHA: We provide -- in the revised
3 edition, we do have that. So in the memo that you will
4 receive recommending -- if there is a highest bid,
5 recommending the highest bid, we would -- in a section
6 of that memo, we would outline all the other bids we
7 received.

8 CHAIR MAYOR REED: So it would be like we do
9 for construction projects. You've got, you know, ten
10 bidders --

11 MR. MURTHA: Correct.

12 CHAIR MAYOR REED: -- there's the engineer's
13 estimate and ten bids and they're all there.

14 MR. MURTHA: Yes, exactly. That way this
15 Board can see every bid we received and you can see the
16 one we selected so that you -- you would be able to
17 compare them as well.

18 CHAIR MAYOR REED: Okay. Other questions?
19 Dave.

20 BOARDMEMBER BARRY: I do. Thank you and
21 thanks for your work on this.

22 I think it's an important issue for us because
23 this really speaks to the transparency of process that
24 we as the Oversight Board are communicating out to the
25 public. If I'm not mistaken, just yesterday, I received

1 my form 700 request for financial disclosure from our
2 diligent City Clerk that oversees us and so it's very
3 important to me that we not only look at what we're
4 trying to accomplish, but how we're going about doing
5 it. And so I think I have a couple of points I'd like
6 to make, the first being that it's very important as I
7 kind of go between Item 6.1 and 6.2 today, I want to
8 stay focused that 6.2 is inherently tied to 6.1 and so
9 what I'm looking for is to incorporate this resolution,
10 this disposition plan into the long-range property
11 management plan.

12 The reason that's important, almost every
13 exhibit speaks to some aspect of disposition and what
14 we're trying to do here as a Board, what we're deciding
15 and so it seems disjointed if we kind of had a plan
16 about how we're going to go about doing things and in
17 the same respect, I wouldn't want it in the long-range
18 property management plan, that's too much detail, where
19 you have to take elements from this disposition plan and
20 load them into each exhibit of property, so to speak and
21 so what I'm looking for is to incorporate by reference
22 this disposition plan as part of the long-range property
23 management plan.

24 And I understand from looking around the state
25 at kind of what's happening in some of the other

1 Oversight Boards, I understand the concern that we
2 wouldn't want to -- every time we had to change or
3 modify our disposition plan, we wouldn't want to go
4 through a DOF process, I get that part of it, but I
5 think if it's referred to, incorporated by reference,
6 that gives us the flexibility. It's very similar to the
7 work I do for the County of Santa Clara in our property
8 management department because we're not talking about
9 buying and selling. It's really the management of the
10 asset.

11 MR. MURTHA: If I could speak to that. The
12 County Counsel's office did ask that and I -- I did not
13 include that in the language and the reason was I
14 discussed last time with the Oversight Board, we have
15 referenced the Oversight Board-approved process in the
16 long-range property management plan language and the
17 long-range property management plan language is more of
18 an expedited process.

19 Just giving an overview, the law does not
20 require the detail that we're coming up with, as you
21 mentioned, for the transparency, so when -- when we
22 put -- when you say in the long-range property
23 management plan will be governed by the Oversight
24 Board-approval resolution and then the disposition
25 process over here is three pages of real minute detail

1 about how we go forward, I didn't want -- if we
2 incorporate by reference, I think it becomes part of the
3 plan and I didn't want that. We don't know enough about
4 how DOF is going to react to these plans, how we're
5 going to amend it, so I think we get the same -- we get
6 to the same spot because we have said and the plan says
7 we will only dispose of the property pursuant to a plan
8 approved by this Board. So I think we get to the same
9 spot without -- I'm just worried about later on the
10 ramifications if we change stuff and you have something
11 incorporated by reference and we change it. What -- I'm
12 not sure necessarily that that means they're okay with
13 the change. So I was concerned with that and I did not
14 include that language in the revisions that I made.

15 CHAIR MAYOR REED: So can you refer to
16 something without incorporating it by that reference?

17 MR. MURTHA: Well, I think you can. That was
18 my point. What we've said is -- in fact, several times
19 what we did in conjunction with discussions with the
20 County is we've put we will only -- we will -- we will
21 sell pursuant to the Oversight Board-approved plan. In
22 fact, we define OB-approved process and we refer to
23 approved by a resolution of this Board. What I --
24 again, what I didn't want -- so we are pointing to
25 that -- what you approved, the disposition process that

1 I just described, which is, again, three to four pages
2 of how we'll sell, the law doesn't require that detail
3 in the plan so what we've said in the plan is -- for
4 specific properties, we've said, one, if we're going to
5 have a competitive process, we've said that a
6 competitive process pursuant to the Oversight
7 Board-approved plan, so that is the reference to the
8 resolution that you will approve.

9 I just -- again, I just didn't want to go that
10 one extra step because it seemed also circular by
11 saying, you know, approved plan, you go over here and
12 then this says now we incorporate you by reference into
13 the plan. Well, in my mind that now is all part of the
14 plan. Incorporation by reference means that that
15 information is all part of that document, so I did not
16 want the DOF to have any say, really, because, again,
17 the law does not allow them any say really in the
18 process. We're supposed to tell them in the plan how do
19 you propose to go about selling these properties. In
20 fact, it really doesn't even say that. It says we're
21 supposed to say that we're going to sell it. We've gone
22 further. We've told them how, the solicitation process
23 or by appraisal. So I think that's more than enough
24 information, again, for DOF, but, again, with respect to
25 the open process, again, this Board approves our process

1 resolution. The process I'm -- I've provided is an
2 attachment and what we've done is it would be attached
3 as an exhibit to the resolution so everyone would know
4 and we would only be able to change it by coming back to
5 you.

6 BOARDMEMBER BARRY: And I still am not
7 comfortable with that. When we look at the first draft
8 of the long-range property management plan as submitted
9 by staff to where we are today, the level of detail is
10 getting better, but I would argue that it's because of
11 the actions of the Oversight Board.

12 Irregardless of what DOF wants, I know what I
13 need to make effective decisions here on the dais, I
14 know what I need to make a vote, so to speak, and so
15 uncoupling the two documents and not referring to it as
16 an exhibit, that's -- that's not typically how I'm
17 comfortable doing business. I -- it lends too much
18 flexibility into what's otherwise a one- or two-sentence
19 per property exhibit for millions of dollars of assets
20 and I think, as I kind of move through my comments, you
21 know, I hope to share some of my other concerns about
22 where the disposition plan is today and I'm hoping that
23 you can kind of take it along as feedback as you
24 continue the work on it and bring it back to the next
25 meeting, but I think that incorporating by reference is

1 important. I don't see the obstacle of DOF prohibiting
2 us from being flexible and nimble and making changes in
3 that regard, but we can continue.

4 CHAIR MAYOR REED: Okay. So do -- I want to
5 make sure everybody has -- if they have specific
6 comments on the disposition process that we get those to
7 the staff and then we'll go back into the long-range
8 management plan going through the properties and that
9 part of it.

10 BOARDMEMBER BARRY: Sure. I still have
11 comments on disposition.

12 CHAIR MAYOR REED: Okay.

13 BOARDMEMBER BARRY: Okay. So when we speak of
14 appraisals, the County process is one of transparency
15 and we follow the Government Code and I understand
16 there's nuances between what we're doing here today and
17 a traditional surplus property sale, but when we -- when
18 we think of appraisals, I'm looking for assurances of
19 the Oversight Board to be able to request appraisals, if
20 we want it and it sort of worries me that Successor
21 Agency staff might look at a piece of property and say,
22 "I don't think we need that appraisal" and then as we
23 move through kind of where the draft of the disposition
24 plan is, it's not making sense if we're not -- if we're
25 only taking appraisals on those properties going to

1 nonprofits yet we're expecting an evaluation team or
2 committee to come back to us with what they think is
3 fair and reasonable, how do we know what's fair and
4 reasonable?

5 I've had some concerns with the value of
6 properties for sale. I'm trying to follow along the
7 market from a County perspective and what we're trying
8 to do in acquisition and it's all over the place. It
9 took us three years to find a house to just lease in the
10 north county. And so the fair market value is that of
11 interpretation and as I sort of travel around and people
12 ask me how's your work on the Oversight Board and what
13 does that mean, I don't -- I want clear answers that
14 there's a transparent process. I don't want people
15 looking back at me that I liked a developer. I don't
16 want it to impact what I'm also trying to do in other
17 aspects of my professional career.

18 And so I think the Oversight Board should
19 reserve the right to request an appraisal, if necessary.
20 It wouldn't be for every property. Absolutely not.
21 That's wasteful. But to maintain the efficiencies in
22 some of the process, I wouldn't want anyone trying to
23 say that, well, there's -- there's the developers in the
24 pockets of either the City or the County or whomever. I
25 want it to be on the up-and-up.

1 MR. MURTHA: We have -- we have put language
2 in that clearly says we don't intend to get appraisals
3 for the sales unless otherwise directed by the Oversight
4 Board. We have clearly -- I mean if this Board directs
5 us to get appraisals on specific properties, then we
6 would go. Again, the reason we're not is because of our
7 financial situation, we really just don't have the money
8 to go out and get appraisals for all the properties,
9 so -- but we have put language in there unless -- if
10 directed by the Oversight Board that we would obtain
11 appraisals.

12 BOARDMEMBER BARRY: I think in most
13 circumstances -- I sort of see this like a capital
14 project where, in most circumstances, the properties
15 that we're going to want appraisals on are some of the
16 highest and best value and to that point I think that
17 the sale of -- the proceeds from the sale of the
18 property could be considered to offset those costs and
19 liabilities.

20 CHAIR MAYOR REED: Well, I think the question
21 is where in the process do we, the Board, decide whether
22 or not we want an appraisal.

23 BOARDMEMBER BARRY: Uh-huh.

24 CHAIR MAYOR REED: So when we launch the
25 process, it seems to me you ought to ask that question

1 of the Board upfront say, okay, we don't need appraisals
2 on these or there's this one we want an appraisal on, so
3 you don't come back and having done a bunch of work and
4 we decide, oh, we should have gotten an appraisal.

5 MR. MURTHA: What we were planning to do was
6 because we think each of the -- we're going to go in
7 rounds and we'll bring back to you a schedule of how we
8 anticipate the sales progressing and what I think we
9 were thinking is we would come to you each time and
10 say -- before we go out, we're going to go out with
11 three or four properties and then give you the --
12 here's -- based on the comps, these are what we think
13 they're worth and at that point if we think we need
14 appraisals, we could get appraisals, if you direct us
15 to. I think in most of them, we think we probably won't
16 get appraisals. Again, we think the solicitation
17 process will then set the -- set -- that is fair market
18 value. What will -- at arm's length transaction, what
19 is someone willing to pay. So that's what we think sets
20 the actual market value.

21 And then the whole point of the evaluation
22 team was they -- they would -- again, a representative
23 body, someone who's not solely us. Again, but it would
24 be our decision as Successor Agency staff to bring that
25 forward. We would let you know what the evaluation

1 team -- what their decision was. I assume in most
2 situations, if they look at it, it's a fair bid, they
3 would look at it, they would have kind of an
4 understanding of what the comps are in the area and they
5 could say that's a good price, so then we bring it
6 forward to you.

7 If we didn't, then, clearly, we're going to
8 have to come back to you to reevaluate what the process
9 is. We come back, we tell you these are all the bids we
10 got, the evaluation team determined that these were not
11 fair bids, so let's say we get -- someone bids ten
12 dollars and then we say to you here's what we think we
13 should do now and we've left it open. I've left -- we
14 may -- I mean there's things like try to sell it to an
15 adjacent property owner based on an appraisal, try to
16 market it with -- to other people directly and see if we
17 can drum up interest.

18 If it's property that potentially is, you
19 know, along the street or something, if there's an issue
20 of maybe giving it to -- back to the City to take it off
21 our hands, I mean we're open to all of those, but until
22 we go out and see what the market is, we don't think --
23 we don't have an understanding of what those other
24 alternatives will be, but we will, again, bring those
25 back to you, explain to you that we didn't get the bids

1 we wanted and we're now recommending this new -- here's
2 where we go forward and then, again, you would have the
3 decision of saying yes or no, telling us go get an
4 appraisal, try to sell it again and -- and we would
5 follow that.

6 CHAIR MAYOR REED: So, Dave, it seems to me
7 there's a point at the beginning before you start the
8 process where we could say we think we need an appraisal
9 on certain properties, make that decision and the
10 appraisal comes first and then you've just described in
11 the process when we get to the -- sometime later, we
12 might decide we want an appraisal and then we would do
13 it at that time. I just think the document needs to be
14 clear that we're going to have a couple of opportunities
15 to make that decision --

16 BOARDMEMBER BARRY: Yes.

17 CHAIR MAYOR REED: -- that we're not going to
18 require appraisal everywhere, but we're also --

19 BOARDMEMBER BARRY: Sure.

20 CHAIR MAYOR REED: We are going to decide as a
21 Board.

22 MR. MURTHA: Even -- I might add, even at the
23 time if we have a high bid, we could bring a high bid to
24 you in the form of a purchase and sell agreement.
25 Again, it's your discretion to approve or reject that

1 high bid and if you as a Board disagree -- if the
2 evaluation team thought it was a fair bid and the
3 Successor Agency thought it was a fair bid and you don't
4 like the bid, you can tell us to go back, get an
5 appraisal and then come back to you and -- I mean we
6 could actually -- with that appraisal, we could
7 negotiate directly with the high bidder. I mean there
8 are all -- again, there are alternatives and we're not
9 -- this process doesn't foreclose any of those
10 alternatives because we always have to come back to you,
11 so --

12 CHAIR MAYOR REED: Right.

13 BOARDMEMBER BARRY: So to sum up my next
14 points, I haven't taken a position whether I would
15 support or oppose the evaluation team or the committee,
16 so to speak. In my mind, how I see disposition most
17 effective is we run a competitive request for proposals
18 to hire or contract with an appraiser so it's an
19 independent third party and it's an open competitive bid
20 process and then, very similar to the County, we run a
21 request for proposals to hire a broker and, again, a
22 broker works from commission of the sale and so, yes, we
23 would sacrifice a little bit of the commission, but some
24 of my concern has to do with Successor Agency staff and
25 their bandwidth, their ability to keep up with

1 everything.

2 Earlier in the document, the report from
3 Mr. Shikada, we see a number of references going back
4 and forth Successor Agency staff would do and property
5 sale schedules and I think that's a lot to sort of take
6 on because I don't see some of these properties as just
7 a cash-and-carry kind of sale. I see an opportunity for
8 possibly even a presolicitation or a prebid conference
9 where people are going to come in and say, "I really
10 want this, but I need this and this to go with it or I
11 don't have a project" and it helps us shape our
12 direction. To me, it seems so dynamic, I question what
13 is the value of the evaluation team? It's to create
14 efficiencies and sort of sort through the process, but
15 if we have an independent third party doing those
16 actions for us -- when you say market comps, I get
17 nervous.

18 Every time I bring a lease forward to my Board
19 of Supervisors, it's a twenty-minute discussion. How do
20 you know it's a market comp? Well, I went to this
21 broker or we looked on this source. Well, how do we
22 know that broker has given us our best value and what if
23 there's a different market comp and we need to be in
24 certain areas because of adjacency issues and how we
25 service the public. So to me I don't want an evaluation

1 team resting on staff that's already stretched as thin
2 as it can be. I'm more comfortable working with a
3 broker and that's their 24/7 job is understanding the
4 market and the community.

5 So that's -- I haven't made a decision. I'm
6 curious to see your next draft because there was
7 reference to the evaluation team and there was a little
8 flurry of emails of who should be on it and who
9 shouldn't and, quite frankly, I didn't have time to sort
10 it all out.

11 MR. MURTHA: What we really intend is for that
12 -- again, very informal. We really wanted just someone
13 to advise the -- us, the Successor Agency Board. We
14 don't want them -- they clearly are not usurping your
15 authority or our -- or our authority as Successor
16 Agency. So what we thought was it gives you some, I
17 think -- and us some comfort when we look at a bid if
18 there's other professionals that -- like a review
19 appraiser. The exact idea when you use a review
20 appraiser before you sell property, that that group,
21 again, who has real estate valuation experience looks at
22 the bids and said, okay, this high bid is within a range
23 of fair market value based -- again, based on their
24 experience and then we bring that to you, it's just one
25 other piece in making the decision to accept the

1 purchase and sale agreement.

2 BOARDMEMBER BARRY: And, again, in my world,
3 the appraiser is -- and the broker are sort of like an
4 engineer and an architect, where the engineer can put it
5 in the ground, but they don't see things the way the
6 architect does. So the appraiser sets out the value as
7 is, where it's located, based on square footage and
8 whatever assets are attached to it, but they're not
9 looking at adjacent properties and other opportunities
10 where a broker is out there and he knows who's trying to
11 get something done in the community. They're connected
12 to the finance, they're connected to the developers and
13 all that sort of thing.

14 MR. MURTHA: With respect to the broker, we
15 didn't foreclose using a broker. I think, again,
16 because of our financial situation and the brokerage
17 fees that would be incurred and I'm -- some of the
18 properties we think will -- will sell themselves. If
19 they don't, we did put some language in that, to the
20 extent, again, after we reevaluate it, we could
21 potentially use a broker. We would come back to you, we
22 would do a request for proposals if we need a broker, we
23 would have -- any -- any agreement with a broker would
24 be a written agreement that we would come back to you to
25 approve so that you understand that, okay, here's the

1 fee, here's the properties he would be working on -- he
2 or she -- and this is the deal that -- that we've stuck
3 and we would want you to approve it.

4 So we're not foreclosing the use of brokers.
5 Again, because of our financial situation, we're trying
6 to maximize the money we get from the sales, so we've --
7 we've -- we are willing to do it in-house.

8 BOARDMEMBER BARRY: And I wouldn't want to be
9 penny -- penny-wise and pound foolish as we move forward
10 and we sort of consider Successor Agency administrative
11 staff is a large cost on the required obligation payment
12 schedule whereas the right theory would be to hire
13 specifically for peak and unusual workload and projects.
14 So if you could show a net present value of the cost of
15 ongoing Successor Agency staff and the time they spend
16 on transacting these sales versus using a broker and
17 paying a two-percent commission and moving on, which
18 outweighs the other? Because I know how I kind of run
19 my department is we -- we hire consultants specifically
20 for that reason. So you can call it a consultant or a
21 broker.

22 So that's okay. I don't want to belabor the
23 point.

24 CHAIR MAYOR REED: Before you move on, our
25 Executive Director had a comment.

1 EXECUTIVE DIRECTOR SHIKADA: Yeah. I just
2 want to say I appreciate David's comments on the
3 evaluation team. You know, just to be clear -- and also
4 appreciate the fact that you want to wait until we flesh
5 all the details to make a decision on that, but I do
6 want to stress for the record the reason why we're
7 looking at an evaluation team was based on direction
8 given by the Board to do that. So I think, you know, we
9 need to wait until we come back with the details, but
10 there was a strong preference when we took the tour from
11 a Boardmember to ask us to look at the evaluation team.
12 At the last meeting, we had a discussion about this and
13 there was some suggestions on how to make the team more
14 effective. So, you know, look forward to seeing what
15 staff comes back with, but again this -- this is purely
16 a response to direction that staff has received.

17 CHAIR MAYOR REED: Okay.

18 BOARDMEMBER BARRY: Thank you.

19 MR. KEIT: Excuse me. I'd like to piggyback
20 on that.

21 CHAIR MAYOR REED: Okay. Richard.

22 MR. KEIT: It was Board -- thank you,
23 Mr. Chair. It was Boardmember Harrison who made that
24 suggestion from the County. We actually thought it was
25 a very good idea. And then I encourage you, before we

1 go forward, to look at -- it was a supplemental memo,
2 6.2, that really, based on Boardmember Ochoa's request
3 for -- asking for a specific person from her
4 organization, which was fine, but that's why we really
5 set into -- read those minimum requirements and, again,
6 as Tom said, it's just one more step, we think, in
7 achieving the -- a fair market value and know that it's
8 just not our professional staff.

9 Secondly, I just want to make the point, there
10 seems to be an underlying supposition that the City
11 wants anything, but the highest value for these
12 properties. It's to our benefit, the Successor Agency,
13 more than anything else because the General Fund for
14 this year, last year and for quite a few years
15 supplements -- the Parking Fund and our City General
16 Fund supplements the Agency budget. So I just want to
17 make that 100% clear. We want to achieve the highest
18 value, so if it means, with respect to getting an
19 appraisal, which we may want to do and we agree on
20 certain properties specified with the Board, we will do
21 so.

22 CHAIR MAYOR REED: Okay. Any more on the
23 disposition process? Anybody else on disposition
24 process?

25 MR. MURTHA: We'll bring forward -- I will

1 have a redline version reflecting the changes that we've
2 made after discussions with the County and we'll bring
3 that next time.

4 MR. ANDREWS: I just want to add one thing for
5 the Board's consideration. JP Morgan's credit team from
6 New York was in the City yesterday. We met with them
7 for a half a day. Part of our conversations were around
8 the fact that they do have properties that they have
9 first liens on and so why we are also in dialogue with
10 the Oversight Board to have a better understanding of
11 what our disposition process is going to be. As we move
12 along in our negotiations with JP Morgan to renew our
13 letter of credit, we will also be sharing that
14 information with them.

15 CHAIR MAYOR REED: So they may have an
16 interest in our disposition process as well.

17 MR. ANDREWS: They -- they do and as
18 Boardmembers, they want the same result that you folks
19 are speaking to today. They just want to make sure that
20 as properties are determined to be sold that it does
21 achieve a maximum value because that's in all our best
22 interests because those monies would be used to defease
23 the outstanding debt with JP Morgan and so they do have
24 a vested interest and we do, also, to make sure that the
25 process works smoothly and every maximum dollar that

1 they have a lien on can be used to help defease that
2 debt.

3 CHAIR MAYOR REED: Okay. So we'll get a
4 redline and we're not taking any action today, so let's
5 just move the agenda to the next item, which is the
6 long-range property management plan, which we've already
7 started talking about a little bit, but we had specific
8 properties we were talking about last time. We did not
9 get all the way through the list, so staff think we
10 ought to, or Board think we ought to start off where we
11 left off on the properties or there are other more
12 general issues that we ought to take up first?

13 John? We're just getting ready to talk about
14 the ballpark properties, I think. Was that where we
15 were, staff?

16 MR. KEIT: I believe, according to the
17 minutes, we did the ballpark properties. We certainly
18 could go through that again and then we -- we thought we
19 were on Number 65 on the screen, which is 5 -- we call
20 it Property 5A, which is the parking lot across from the
21 arena.

22 CHAIR MAYOR REED: Okay. Well, before we move
23 off of the ballpark properties, we might want to finish
24 that. We do have a letter that I received this
25 morning -- I think it's been passed out for the Board --

1 from Lew Wolff, the Oakland Athletics Baseball Company,
2 indicating that they consider the option agreement to be
3 a valid and enforceable agreement and expects that the
4 option agreement will be honored by the Successor Agency
5 and the Oversight Board. That's the latest
6 communication on ballpark properties.

7 Anything else on those -- those properties
8 before we move off of them? John.

9 BOARDMEMBER JOHAL: Well, I just had a --

10 CHAIR MAYOR REED: Yes.

11 BOARDMEMBER JOHAL: -- comment on that.

12 CHAIR MAYOR REED: Okay.

13 BOARDMEMBER JOHAL: Since I have not been
14 involved very much, I only step in for Micaela every now
15 and then, I am uncomfortable with the categorization of
16 this ballpark property at this point. I feel that we do
17 need to review the option agreement and I do wish that
18 you would bring back the option agreement for the entire
19 Board to review so that before the Board makes any
20 decisions, they're fully aware of the full terms of this
21 option agreement. So I would like for you to bring back
22 the option agreement for the Board to review.

23 MR. DOYLE: If I can respond. I think that's
24 -- yeah, that's not a problem, obviously, but the issue
25 is in litigation and I did have an email exchange with

1 Micaela. I didn't want to continue the email exchange
2 to include the entire Board because that's a Brown Act
3 problem, meeting not in the public presence, so -- but I
4 did tell her privately that the recommendation is we
5 have contacted our conflicts counsel and have asked him
6 to be available for a closed session discussion.
7 Because the matter is in litigation, because the
8 Oversight Board is a named party in the litigation, it
9 is an appropriate closed session discussion so we can
10 have a full discussion about the issue and so we will
11 agendize that at, hopefully, the next meeting or a
12 special meeting, but we'll make sure we address those
13 concerns.

14 CHAIR MAYOR REED: And as part of that, the
15 Board should get a copy of the option agreement itself.

16 MR. DOYLE: Yeah and I think in the latest
17 missive we did receive this morning from the Oakland A's
18 saying that they believe this is an enforceable
19 agreement, I think adds to the dialogue, but we will
20 just -- we will agendize it for both an open and closed
21 session then and have that conversation.

22 CHAIR MAYOR REED: So I would anticipate
23 probably at the next meeting, we'll go -- at some point
24 in the meeting, we'll go into -- back into the
25 conference room for a closed session.

1 MR. DOYLE: Yes.

2 BOARDMEMBER GUTHRIE: Just -- I did have some
3 access to a couple of those emails, I was on the
4 distribution and it did raise a question in my mind
5 which is that we as the Board were sued as part of this
6 litigation, which we hadn't been informed of, and who is
7 representing our interest as the Board since we are not
8 the City or the Successor Agency? Is our independent --
9 we have conflict counsel, but they're not really our
10 counsel to represent us, I don't believe, on this matter
11 and the City Attorney is representing the Successor
12 Agency and the City, so who is representing us?

13 MR. DOYLE: Well, at this point, we have filed
14 on behalf a response to the pleading and now this is --
15 there's a history here, Mr. Guthrie, and I want to sort
16 of run through it. There was an initial lawsuit where
17 the Oversight Board was not a named party and the first
18 lawsuit was a lawsuit filed against the City, the
19 Successor Agency and the Diridon Development Authority.
20 When the property was conveyed back to the Successor
21 Agency, a second complaint was filed on behalf of the
22 same group and challenging the transfer. The Oversight
23 Board was named then. The cases have been consolidated
24 and we have assumed the representation.

25 That is a fair question. That is one of the

1 purposes of the closed session and to have independent
2 counsel there to talk through that question as to
3 whether or not the Oversight Board wants to continue to
4 have the City Attorney's Office represent all the
5 defendants or whether or not they want to have
6 independent counsel represent them in the litigation and
7 that's a conversation I think is more appropriate for a
8 closed session where you can have a full and fair
9 conversation about that.

10 But at this point the case has sort of been on
11 hold. Part of the reason was the consolidation of the
12 cases. The second filing of the new complaint delayed
13 it. Judge Huber has it. Initially, it was just
14 essentially seen as a CEQA case challenging
15 environmental impact report, while there were other
16 causes of action. The focus now seems to be over the
17 option agreement and there's a long story here and I
18 think it's -- it's a good conversation we can have.

19 BOARDMEMBER GUTHRIE: Okay. I also just want
20 to state for the record that I did review Mr. Murtha's
21 letter and -- thank you for that -- but this is an item
22 that I and two of my colleagues, who are on a different
23 board, have an identical issue and on those, at that
24 board, we are not convinced that these encumbrances that
25 were made after the freeze date were legal, no matter

1 what entity made it with Agency funds and so I just want
2 to express some of my view on this matter and I'm not
3 going to delay the meeting for that.

4 MR. DOYLE: Well -- and I would hope -- I
5 would hope you'd keep an open mind on that to have --
6 until we get a chance to have a full discussion in
7 closed session because I think those cases are very
8 distinguishable, but, you know, we can have that
9 conversation.

10 CHAIR MAYOR REED: Okay. Dave.

11 BOARDMEMBER BARRY: Thank you. So just as a
12 point of order, it's probably no secret that I'm one of
13 the biggest fans of the A's coming down. I think it's
14 fantastic. I just want to make sure that we're going
15 about it the right way is all. I think there's options
16 within the long-range property management plan to keep
17 this project moving, but I'm not sure as stated in the
18 current draft of the long-range property management plan
19 that's the way to do it.

20 The real concerns that I have at this point
21 today, just kind of sitting here, is really there was no
22 notification to the Oversight Board when that second
23 complaint was filed and that's -- and then I'm -- am I
24 reading it correctly, so the A's said in a letter we
25 received this morning it exercises extension option

1 agreement on September 26, 2013, but the staff report
2 that I'm looking at as item 6.1 supplemental memo, it
3 goes up in the time line, which is very helpful, through
4 July 30th, but it makes no reference to the option being
5 exercised. So to echo on John's comments, it sounds
6 like things have happened without Oversight Board
7 knowledge, which goes back to my earlier comments on the
8 previous item.

9 MR. DOYLE: Well -- and, again, it's probably
10 better for a full conversation in closed session, but
11 just on the record itself, those -- the information
12 concerning the option extension, I believe, was sent in
13 the correspondence packet of one of the Oversight Board
14 meetings. I think Mr. Keit regularly keeps the Board
15 apprised of that through correspondence and so I think
16 that was attached.

17 MR. KEIT: It was. I can't tell you which
18 meeting it was, but we can certainly go into that.

19 MR. DOYLE: We can go back and clarify the
20 record, we'll have a chronology of things and we can
21 have that discussion.

22 CHAIR MAYOR REED: And let's not forget that
23 we've had some turnover in the Board and -- so some of
24 these things may have happened earlier before, you know,
25 everybody on the Board was here, so we have to be --

1 when we have turnover, there's some things maybe we need
2 to refresh in terms of information.

3 BOARDMEMBER BARRY: So as part of the staff
4 reports, I think it would be helpful -- I don't know if
5 there's any other pending lawsuits. I kind of take
6 pride in my responsibility as an Oversight Board member
7 to do my homework and follow up if I'm not at the
8 meeting to watch the meetings, so I'd appreciate if
9 staff, as they're including in reports and
10 correspondence, anything that's related that's -- or
11 reportable as far as lawsuits against the Oversight
12 Board.

13 MR. DOYLE: And we've -- and we've done that,
14 we'll endeavored to do that, but we'll make sure we do
15 and I think there might be an issue with respect to
16 turnover, but the two major cases are the ones we have
17 against -- the one against the County of Santa Clara
18 involving the PERS levy and I think we've kept the Board
19 up-to-date on that -- the Board is not a party to that,
20 but it does ultimately influence the amount of tax
21 revenue you will have to pay down debt -- and this
22 lawsuit involving the option agreement.

23 CHAIR MAYOR REED: All right. Anything else
24 before we move off of properties up to 64?

25 We'll move then to Property -- I'm sorry.

1 BOARDMEMBER JOHAL: I'm sorry. So just to be
2 clear, this is going to be a closed session discussion
3 and at which point you will be sharing the option
4 agreement with the Board?

5 MR. DOYLE: Absolutely.

6 BOARDMEMBER JOHAL: Okay. So this is not a
7 closed item at this point. There's going to be
8 continuing discussion on this.

9 MR. DOYLE: Right. Right. It's all public
10 record, so we -- you know, we just need to get -- but I
11 think the conversation, since it is in litigation, is
12 more appropriate for a closed session discussion and
13 then the Board can decide what it wants to do.

14 BOARDMEMBER JOHAL: Well, it just seems that
15 there's huge concerns raised about this even by
16 Pillsbury and I just want to make sure that we do our
17 fiduciary duty and stay on it.

18 MR. DOYLE: Understood, but let me just -- you
19 know, there's no myth here that the Pillsbury law firm
20 is the law firm that has represented the San Francisco
21 Giants for many years. The individuals they name as
22 Stand for San Jose are -- are a front and I just think
23 we -- you know, it's -- it needs to be clear on the
24 record that that's the case. I am well aware of your
25 fiduciary obligations. Independent counsel is here for

1 that reason and will handle it accordingly, but this is
2 very much an effort to try to stop the effort of
3 baseball to come to the South Bay and that's all it is.
4 But the Board does have independent obligations and they
5 need to fulfill that, we understand.

6 BOARDMEMBER JOHAL: Right. And I'd rather
7 hold judgment on Pillsbury's motivations until we hear
8 from them.

9 CHAIR MAYOR REED: Well, we've heard from them
10 a lot, so I'm sure it's pretty clear what the -- but I
11 do want to make sure that the option agreement gets
12 circulated to the Board ahead of the closed session so
13 that if anybody wants to look at it, they have a chance.

14 Okay. Dave.

15 BOARDMEMBER BARRY: And just one more point on
16 the closed session, whomever is in the chair that day.
17 If -- if it could be clarified -- I'm mixed up between
18 the reports, quite frankly, of is the case to be decided
19 in Court or decided by the Oversight Board and it's just
20 not clear to me where it is.

21 MR. DOYLE: There is roles for both. Again,
22 that's -- that's a conversation for closed session, but
23 the issue is front and center in the -- in the Superior
24 Court here in Santa Clara County and there is another
25 lawsuit that's been filed in Santa Cruz County, which

1 the issue will be raised as well, so there's going to
2 maybe be three forums, but, again, we can have that
3 conversation. The Oversight Board is not a party to the
4 Santa Cruz County action.

5 BOARDMEMBER GUTHRIE: But, if I may --

6 CHAIR MAYOR REED: John.

7 BOARDMEMBER GUTHRIE: -- just to be clear
8 then, it sort of is incumbent upon us to give our best
9 judgment irregardless of what the Court decides. If the
10 Court trumps us and overrides us, that is a subsequent
11 decision. Correct?

12 MR. DOYLE: I mean you have independent
13 fiduciary obligations, but the scope of those fiduciary
14 obligations and what's in question I think are -- need
15 to be discussed.

16 BOARDMEMBER GUTHRIE: All right.

17 CHAIR MAYOR REED: Well, if the Board decides
18 it wants to breach the option agreement, I guess the
19 Board could make that decision, but we don't have to
20 anytime soon because even if we were going to sell the
21 property, I think we'll have an answer on the option
22 agreement from other -- other places before the Board
23 has to reach -- reach that decision. Just given the
24 pace at which we're likely to dispose of properties, I
25 think the issues that we're now worried about will

1 probably be -- well, at least decided by a trial court,
2 maybe not by the Court of Appeal, although, at the pace
3 we're going to be able to sell property, it's going to
4 be a while before we get around to disposing of all of
5 them.

6 Anything else on 0 to 64 properties? All
7 right. Let's turn to Property 65 then. That was the --
8 65, South Montgomery Street, arena parking lot 5A.
9 Property 65. Any questions or comments on this specific
10 one or the language in the revised document?

11 One thing on this. We are at the City level
12 in the process of doing the Diridon Area -- what is the
13 plan called -- Pacific Plan and environmental review for
14 the larger area and that's in process and I forget where
15 we are in the review process on the environmental
16 review, but we're not finished with that yet.

17 MR. DOYLE: I think it may be out for comment
18 or soon to be out for comment. There's -- I think June
19 of this year, we're expected to -- we're hoping to have
20 the Council take action.

21 CHAIR MAYOR REED: Okay. So we're moving
22 along on that, which, obviously, affects the value in
23 some way of all of the properties over there including
24 this one. Anything else on 65?

25 Let's turn to something more humorous, the

1 Improv Comedy Club. If you haven't been there, it's a
2 rehabilitated theater and they do actually have funny
3 people in there from time to time. So it is another
4 property for which we -- I think the current status of
5 it is we've got a lease on it, but a short-term lease
6 that isn't -- doesn't really encumber the property very
7 much.

8 MR. KEIT: We do and it does bring in revenue,
9 I think about \$5000 a month.

10 CHAIR MAYOR REED: All right. About \$5000 a
11 month. Okay. Not a lot of revenue.

12 MR. KEIT: Not a lot. Not enough.

13 CHAIR MAYOR REED: But at least it's occupied.
14 And this one is maybe an interesting one in terms of the
15 disposition process that we talked about earlier.
16 Because we have a tenant, it's a unique kind of a
17 property and if we could convince the tenant to buy the
18 property, that's highly likely to be the best value that
19 we can get and so let's just think -- not to reopen the
20 disposition process, but so on this property, how would
21 we go through -- so let's say it's time to sell this
22 property, come back to the Board, the Board says we want
23 an appraisal or we don't, we put it out for bid and
24 maybe we don't get very much and then this could be one
25 of the ones where we do, okay, we didn't get any good

1 bids so we want to talk to the tenant about buying the
2 property and we could negotiate something, if that's
3 what the Board wants to do. So this one may be one of
4 those alternatives where we end up dealing direct with
5 the most obvious person. Hopefully, they'd want to buy
6 it.

7 And then the other question I have about this
8 property and others is what if nobody wants to buy them
9 or the only price is way below what we think is a fair
10 market value? We saw that with the parking over under
11 Tower 88. And so what do we do then? Does the
12 disposition -- does this long-range property plan
13 contemplate -- how long is it? Do we just sit and wait
14 for the market to improve for years or decades on some
15 of these properties or do we know the answer to that?

16 MR. MURTHA: No, we don't. The law has the
17 four designations that you can -- you designate your
18 property for and it really doesn't contemplate like how
19 long. I mean it's called, "long-range." I mean so I
20 think -- when I look at that, I think, okay, it
21 envisioned that we could hold for a number of years, but
22 then when you look at the whole purpose of the
23 dissolution legislation was to wind down redevelopment
24 agencies.

25 Now, clearly, we have bond obligations that go

1 on for quite a while, so, you know, again, there's --
2 there is no real guidance on that. I think in this case
3 the property is also encumbered with HUD debt and so
4 over the years as we pay that down, I think -- I think
5 the idea with this was to try to enter into maybe a
6 longer-term lease with -- with the Improv and then as
7 the HUD gets paid off, at some point, we would -- just
8 as you said, Chairman Reed, that we would then come back
9 and either do a solicitation -- I think we think
10 solicitation is a good process because then it at least
11 lets us know what other people are willing to pay, but
12 you're right, we may -- there are certain properties we
13 may get little or no interest in and so we will have to
14 reevaluate and try to come up with a strategy of just
15 what you said. I really don't know. I mean we're going
16 to have to probably cross that bridge when we come to
17 it.

18 CHAIR MAYOR REED: So we're not precluded by
19 law -- so I'm looking at our outline, number 10 outline,
20 your disposition strategy for the property, where we say
21 at the end of the HUD Section 108, loan terms, Successor
22 Agency proposes to sell the property, so when we decide
23 we're going to sell it, if we don't get a bidder or it's
24 ten bucks, it may be that, well, let's just keep leasing
25 it at some rate that pays for the maintenance and we

1 wait for the market to improve.

2 MR. MURTHA: Right.

3 CHAIR MAYOR REED: How long that might be, we
4 don't know, so I guess the law is somewhat open-ended in
5 that -- in that regard.

6 MR. MURTHA: Right. And at some point, it
7 could be that we get offers that we may have to just
8 accept, I mean that -- again, we're winding down the
9 Agency. At some point, we are going to have to get rid
10 of all the properties and if we put them up for sale and
11 we get two bids, we may have to just take it. I mean
12 that could be that's just what the market is and we have
13 to dispose of the property. I mean I -- at some point,
14 I'm not sure, you know, how we would deal with that, but
15 we may have to.

16 CHAIR MAYOR REED: But under the statute,
17 we'll have years at least to wait for the market to
18 improve.

19 MR. MURTHA: I believe so, yes.

20 CHAIR MAYOR REED: There's no -- there's no
21 fire sale date anywhere.

22 MR. MURTHA: Correct. The long-range property
23 management plan suspended and, basically, took out the
24 language that said you shall expeditiously sell all your
25 property, so this is in response to that.

1 CHAIR MAYOR REED: Okay. Anything else on the
2 Property 66, Improv Comedy Club.

3 Abe.

4 BOARDMEMBER ANDRADE: Yes. Thank you,
5 Mr. Chair.

6 I would also like to have a -- to go along
7 with the review of these properties, maybe a summary or
8 a listing of any other government entities or nonprofit
9 agencies that have shown an interest in any of the
10 properties as well. I know we've included some of the
11 information where the City is interested in -- in
12 maintaining -- or bidding or taking title to some of
13 these properties through the process, but I'd also like
14 to know if there's any other government entities that
15 have shown an interest or any nonprofits as well. Even
16 though we may not show a preference for any one, but
17 just to -- just to have that information as well.

18 CHAIR MAYOR REED: Would that be part of the
19 plan or you're just talking about collateral
20 information?

21 BOARDMEMBER ANDRADE: Just collateral
22 information, separate from the plan.

23 CHAIR MAYOR REED: Okay. Because we do have
24 some where there are other government agencies that are
25 interested in the properties, like the Billy DeFrank

1 Center. It's a community center. The County has
2 expressed some interest in it. You never know what kind
3 of a deal might be worked.

4 Okay. We'll move off of the Improv to
5 Property 67, which is the Billy DeFrank Community Center
6 that I just -- just mentioned. Anything on that? This
7 is the one with a longterm lease, very longterm lease.

8 MR. HYLAND: Correct. This property was
9 acquired as three separate parcels and merged together
10 and the Redevelopment Agency demolished two buildings
11 that were formerly on the parking lot site. This --
12 this property we're proposing to -- to subdivide the
13 parcel and transfer the community center building to the
14 City as a government use and in addition -- and go out
15 to market with the parking lot parcel.

16 We do have JP Morgan security on this
17 property, so as a way to satisfy JP Morgan's interest in
18 the property, we thought splitting the property into two
19 and reserving the true government use portion and
20 selling off the parking lot would be most effective.

21 CHAIR MAYOR REED: This is one that there's
22 been some interest by others to keep the parking
23 associated with the building and it seems to me in that
24 case we may be looking at trying to put together some
25 money from some multiple government agencies who want to

1 acquire the parking lot so it can be part of the
2 community center or selling it to some third party who
3 thinks they can make a go of something on the site.

4 And so I'd see this one where we put it out
5 for bids, we don't get private sector people that are
6 interested in it because of the circumstances and then
7 we try to put together some sort of a package deal to
8 acquire it, so if we, the City or we, the City and the
9 County or we and somebody else wanted to acquire the
10 parking lot after we go through a bid process and we
11 say, okay, the best thing to do is to try to acquire the
12 parking lot, make it part of the community center, how
13 would that fit into the process? We'd just say, well,
14 we're going to try to negotiate the best deal we can,
15 let's do an appraisal or let's come to a resolution and
16 generate the most cash possible?

17 MR. KEIT: A couple items, Mr. Chair. We are
18 open to Board direction on this and we did -- and as Arn
19 Andrews mentioned, when we met with JP Morgan, we did
20 discuss that it is a single parcel so in that respect
21 there may be an ability to retain the entire parcel for
22 government use.

23 We also are reacting to what DOF has done with
24 other cities in -- in terms of parking and rejected many
25 of those, so this is an interesting piece we have, but

1 we're, again, open to Board direction and we certainly
2 can decide where we put this on the schedule. If we do
3 try to solicit -- put it up, the property for
4 solicitation on the parking piece, if it's towards the
5 end of the schedule, it would also provide opportunities
6 to continue working with the Counties or if any
7 nonprofit came along to take down the property. We know
8 clearly Billy DeFrank nonprofit has no funds to do so.

9 MR. ANDREWS: And just one point of reference
10 for the full Board. So, currently, in our agreement
11 with JP Morgan, there is only one property that they
12 have actually acknowledged can be a government use
13 property and that's the California Theater. Any other
14 property that we discuss that they have a lien on in
15 terms of the Oversight Board either granting or not
16 granting a government use status would still need to be
17 a discussion point with JP Morgan.

18 And with Billy DeFrank, while they know that
19 it's currently conceived as a single lot, they know the
20 potential is there to possibly subdivide it and monetize
21 the parking lot and so to the extent that Billy DeFrank
22 remains in a single lot and is also deemed as a
23 government use property, we would have to have those
24 discussions with JP Morgan.

25 CHAIR MAYOR REED: And those discussions with

1 JP Morgan would be, "We'd like to sell this property,
2 will you release your lien" and they'll say, "Well, how
3 much are you going to give us" and then we'll figure
4 that out and then they'll either release their lien or
5 they won't. Right? And if they don't, we're not going
6 to be able to sell the property.

7 MR. ANDREWS: Correct.

8 CHAIR MAYOR REED: Yeah. Usual real estate
9 transaction.

10 Dave.

11 BOARDMEMBER BARRY: So -- so along these
12 lines, my first point would be I'm not sure if I'm ready
13 to declare government use or what. To me, in my mind,
14 it's an enforceable obligation. We have a very
15 long-term lease and I haven't -- without seeing the
16 terms of the lease, I don't know how much parking is
17 included or not included within the lease, but
18 irregardless of that, you have a facility that's serving
19 the community as an enforceable obligation, so I think
20 that very much it mirrors other properties in the -- in
21 the portfolio that when we make these decisions of what
22 to do with it at the end of that enforceable obligation,
23 whenever that may be, that's kind of a different story.

24 To the second point, as much as we appreciate
25 DOF removing the fire sale status, you know, you must

1 sell your properties today, subdividing inherently loses
2 value of the property. Here's a parking lot, sort of
3 off by itself, in an area that's otherwise accessible
4 with other surface parking and I would worry that
5 without the -- at the end of the enforceable obligation
6 if we did go to a disposition, if the nonprofit was no
7 longer interested, if, if, if, there's a higher value in
8 having all the parcels together. I would be opposed to
9 subdividing at this point, but I'm open for feedback, so
10 --

11 CHAIR MAYOR REED: Anybody else on -- on this
12 one? All right. Let's move then to the next property,
13 68, the Autumn Court -- 456 Autumn Court, Autumn Street
14 Extension parcel.

15 Dave.

16 BOARDMEMBER BARRY: I wasn't sure if staff was
17 going to say anything. Are we looking at Autumn Court
18 as part of the plan that's also aligned with Agenda Item
19 today 7.2?

20 MR. MURTHA: Can we go back real quick. On
21 Billy DeFrank, what I would probably suggest, we put it
22 in government use. I think your suggestion of using it
23 as subject to enforceable obligation is a good one.
24 What I'd probably suggest is we leave it as government
25 use because the government use does provide for the

1 transfer to City, County, a public entity because we do
2 feel it's a community -- a community center, but then to
3 the extent if -- again, there have been issues with DOF
4 about what are governmental uses, so I guess what I'd
5 suggest is if -- if that's rejected as a governmental
6 use, then we go probably and put it as a subject to an
7 enforceable obligation, i.e., the ground lease and,
8 again, I'm not sure -- we are selling most of our
9 properties that have ground lease, we're just selling
10 them subject to the ground lease. I think that would
11 still work that it is subject to an enforceable
12 obligation, but I guess I would recommend we kind of
13 wait and use that as a fallback position. That would be
14 my suggestion.

15 CHAIR MAYOR REED: Okay. The Autumn Street
16 question. Does staff have anything to say on the Autumn
17 Street Extension piece before we get into it?

18 MR. HYLAND: Yes.

19 MR. KEIT: Do you have your mic on?

20 MR. HYLAND: I do.

21 The 456 Autumn Street was not part of the
22 properties that were rejected as government use from the
23 DOF. This property is part of the Phase 2 of the Autumn
24 Street Extension and in discussions with the County, the
25 City is currently under construction on Phase 1 of the

1 Autumn Street Extension which comprised the properties
2 that DOF rejected as government use, which we will talk
3 about in a minute. The Property 68 is in Phase 2. The
4 City has budgeted acquisition funds for the purchase of
5 the additional parcels required for Phase 2 of Autumn
6 Street.

7 In discussion with the County, they
8 recommended that we retain for government use, however,
9 we -- I'm sorry -- that we put a deed restriction on the
10 property that if the property is not developed as part
11 of the Autumn Street Extension project within a ten-year
12 period that the Successor Agency would then sell the
13 property through the solicitation process.

14 CHAIR MAYOR REED: Okay. Any questions on it?
15 Dave.

16 BOARDMEMBER BARRY: Well, Autumn Street, this
17 is very similar to some of the other things we see
18 happening in the other Oversight Boards and,
19 essentially, when you look at Autumn Street, we're
20 talking about Property 68, 456 Autumn Court, but I'm
21 sort of connecting, I guess, 69 through 75 as well to
22 it. So you're saying that 456 Autumn Court is subject
23 to government -- governmental use; is that right?

24 MR. HYLAND: That's correct.

25 BOARDMEMBER BARRY: Because 69 through 75 are

1 following suit as part of the development?

2 MR. HYLAND: So all of these properties are --
3 are included within the Autumn Street Extension project
4 which runs from Coleman all the way down to Santa Clara
5 Street to -- and what the City has done is broken it up
6 into three phases. Phase 1, which includes Property 69
7 through 75, the construction has begun. The first 200
8 feet of -- of roadway has already been constructed on
9 Property Number 69 and is complete. The remainder of
10 the Phase 1 parcels have been -- all the buildings have
11 been demolished and the road has been graded. The City
12 is currently in the process of going out to bid for the
13 final construction of the roadway through Property 75 in
14 April and they anticipate that construction would be
15 completed at the beginning of 2015.

16 So -- so -- so within that -- this is -- the
17 DOF did reject these properties as government use
18 because they have not been constructed as a government
19 use yet, however, we are in contact with DOF and are
20 planning to go up and discuss the rejection of these
21 properties as government use because in the -- in two
22 other long-range property management -- long-range
23 property management plans, in the case of Gonzales and
24 the City of Vista, both of those cities have had parcels
25 approved for transfer as government use within -- to

1 their cities for properties that not -- have not yet
2 been constructed for a community center, in the state of
3 Gonzales, and for Vista for a future park. So there is
4 precedence by DOF for allowing a government use transfer
5 for property that has not yet been constructed for that
6 government purpose. So we would like that opportunity
7 to take that up with DOF, so --

8 MR. MURTHA: If I could also point out,
9 there's a couple legal issues involved here. The
10 statute does say constructed and used for public
11 purposes and I think the one legal issue is does that
12 mean it's ready to be occupied. Clearly, the City,
13 public entities, there are -- construction is a process
14 where I mean there's a lot of planning, there's --
15 there's construction drawings, there's, you know, demo,
16 predevelopment and then there's construction and so I
17 think we would argue that at some point constructed and
18 used, there's -- hopefully, it's not just meaning
19 constructed and used.

20 The second issue is whether -- what we tried
21 to do was transfer those to the City as a governmental
22 use and that was rejected. The long-range property
23 management plan also has retained for governmental
24 purpose, so the next legal issue is can you retain for
25 governmental purpose, then do the construction and that

1 it's -- and when that property is then constructed and
2 then used, can we then transfer it. And so that issue
3 hasn't been resolved yet and so what we're hoping to do
4 is by putting it on the property -- the long-range
5 property management plan now, we'll get some direction,
6 I mean DOF will either reject it or not, and then we can
7 come back and address it after they've had their say.

8 BOARDMEMBER BARRY: My concern that I bring
9 through the Oversight Board work I do in Sunnyvale and
10 here is that I'm tired of the back and forth with DOF.
11 It's really hard for me to keep up with. You're in,
12 you're out; it's in, it's out; it's litigated. I'd
13 rather do the work here at this level. That's what
14 we're supposed to be doing.

15 When I get a letter that says in black and
16 white, these properties are rejected, I look at -- just
17 as much as you're referring to the precedents where DOF
18 may have approved similar, in your mind, projects,
19 there's also precedents where they didn't and I think
20 that the simplest arrangement for these properties in
21 particular is transfer to the City subject to a
22 compensation agreement with the taxing entities. It's
23 the same thing that we saw happen down in Morgan Hill as
24 related to the fire station. And so I'd just like to
25 kind of put that out there for consideration.

1 MR. KEIT: Richard.

2 Ultimately, that may happen, but we think --
3 there is a distinction between the 68 and the 69, 69
4 through 75 rejected and one is, and as Kelly mentioned,
5 that these have already been cleared. If you go out
6 there, it's a flat road that's been compacted, it's just
7 ready for development. They're going to go out for bid
8 in April. We totally agree with the County and their
9 point was on 68 the time horizon we don't know, so that
10 definitely makes sense to have a compensation agreement
11 with a -- I think we suggested -- we agreed to a
12 ten-year period because there's no funds for
13 construction. This has fully funded for construction
14 and to Tom's point, this design started in 2011, long
15 before dissolution was ever contemplated.

16 So we have been successful and we appreciate
17 going to DOF. We've done it many times and we've won a
18 few and we've lost a few, but we do want to go back
19 there and say this is a -- because of the time line of
20 when this was designed and where we are in this stage of
21 development and that they're going out to bid in April
22 for the construction -- it says February in your
23 document, we'll make that change -- we think we have a
24 good case, but it is unknown what DOF's response will
25 be.

1 CHAIR MAYOR REED: Anything else on 68? We've
2 already got over into 69 to 75. Anything specifically
3 on those as well beyond what we've already done? I
4 think that's the end of Autumn Street then.

5 We move to 76, Guadalupe River Park, 501
6 Locust Street.

7 MR. HYLAND: This property is clearly a
8 government use. We -- we held off including it in the
9 previous properties that were approved by DOF for
10 government use because it is also JP Morgan collateral
11 and we wanted an opportunity to discuss with JP Morgan
12 removing this from -- from their portfolio of
13 collateral.

14 CHAIR MAYOR REED: What did they say about
15 that in the meeting yesterday?

16 MR. ANDREWS: Their initial indications is, as
17 the photo illustrates, they appreciate that this is,
18 basically, parkland next to a trail and it's -- for all
19 intents and purposes, the majority of the property is
20 water and so I think in this one they're receptive to
21 it.

22 CHAIR MAYOR REED: And the County of Santa
23 Clara has a deed of trust as well?

24 MR. ANDREWS: Correct. So -- that is a good
25 point. Whenever we discuss JP Morgan's liens, that's a

1 first lien. The County has a second lien on all the
2 properties that JP Morgan does with the exception of the
3 California Theater. So whenever we speak of a JP Morgan
4 lien, it's important to note that the County has a
5 second lien behind that.

6 CHAIR MAYOR REED: Well, there's a lot of
7 people in line to get funds out of these properties.

8 Anything else on the parkland? Let's turn to
9 -- whoops. We jump from 76 to 77-96, a whole bunch of
10 parcels at the Convention Center South Hall.

11 MR. KEIT: Yes. Mr. Chair, before you -- we
12 open it up to the Board, I just want to point out one
13 thing, that, as you see, this whole document has been
14 redlined and in part it was due to and it is explained
15 in a supp -- one of the many supplemental memos, I know,
16 you received as a Board, but the whole idea was to put
17 in all the information and changes recommended by the
18 Oversight Board at the last several meetings and also
19 some discussion with the County on this property and I'm
20 sure it'll generate some discussion, but we did put in
21 the fact that we believe that, to the County's point,
22 that if any or all of this property is sold that the
23 mon -- the proceeds should go to the Successor Agency to
24 pay down enforceable obligations.

25 And so we're more than willing to put in a

1 deed restriction and covenants to that point because,
2 clearly -- and I've made the point many times before --
3 this is the only property where the future expansion of
4 the Convention Center is possible. We don't want to
5 preclude that in future years and that really should be
6 up to the City as designated in the General Plan, but
7 there's a chance that part of the property could be sold
8 for a hotel and if there -- if that is sold or leased,
9 that revenue should come back to the Successor Agency.

10 CHAIR MAYOR REED: So that's per the
11 discussion with County staff, so, theoretically, we'd
12 like to have another hotel there, we had -- at one time,
13 it was in the plans, so we build out the south side of
14 the Convention Center, we get a hotel to go in there, it
15 will generate some kind of revenues. Those revenues
16 then come in back to the Successor Agency to be disposed
17 of wherever we are in the waterfall. Is that the
18 thinking?

19 MR. KEIT: Correct. Correct.

20 CHAIR MAYOR REED: Okay. Anybody else on
21 this?

22 John.

23 BOARDMEMBER GUTHRIE: I've been having
24 problems with this for a long time, as you probably well
25 know, and part of it is that, you know, we can all

1 visualize what governmental assets are. I mean in the
2 clearest case, a police station or a fire station, it's
3 pretty clear that those are designated for government
4 purpose, but this is not one of those and a couple
5 definitions.

6 Quasi-public is not government purpose. It's
7 not one and the same. Parking is not government purpose
8 unless all parking is fully dedicated to public
9 employees parking at a governmental venue and this
10 doesn't fit that and, as you know, DOF is disallowing
11 parking all over the state on property management plans.

12 Land-banking property for possible future
13 development is not public purpose and that's,
14 essentially, what's being done here. Now, I made a
15 statement at one of the previous meetings that no one in
16 the room could tell me or anyone what this would be used
17 for and I still stand by that statement. We did our
18 tour of the facility and what I learned at that tour --
19 and I really appreciate staff, you know, cooperating on
20 that tour, it was really good -- was that there's a
21 large lot that's been paved and it has a very
22 substantial structure, which is a temporary structure,
23 it's a tent, that's being used for some additional
24 storage. As I recall staff saying, there were several
25 events there each year. As I recall, there was an auto

1 show and a home and garden show that were used in that
2 tent and that there were contracts through 2016 for that
3 -- for those operations period. When I read the paper
4 and I see the discussion that the Mayor and the Council
5 are having on this, I notice that some of the neighbors
6 are upset by the tent, they want it gone. There's been
7 discussion back and forth of whether we should keep the
8 tent or not, but it's clear in that that that usage is
9 temporary.

10 Parking -- according to your own parking
11 minutes in the staff reports, that is one of four
12 properties that are only considered temporary parking,
13 to be used now for parking. So the ostensible purpose
14 of this being declared government purpose is for the
15 purpose of saying what's it going to be used for in the
16 future and we may want to develop the Convention Center.

17 Well, if you go back to the 2007 Strategic
18 Alliance Group report, they, basically, kissed that off
19 for the foreseeable future. They, basically, said go to
20 the north, develop that. They said, essentially, the
21 market does not currently need additional exhibit hall
22 space, they said that you are competing with seven other
23 -- excuse me -- eight other major places, convention
24 centers, in the California market, none of which have a
25 facility like this and none of them need it. So the use

1 for this property is maybe we can develop it on the next
2 go-round for upgrade to the Convention Center and I
3 would remind you that you developed the Convention
4 Center in the 1980s and you just did this revision in
5 2014 and that your next upgrade will be ten, twenty --
6 you know, decades from now and you don't have the money
7 right now to even consider an upgrade.

8 So you don't have the market, you don't have
9 the money, you don't have the means for this upgrade and
10 what are we stuck with? This is -- keep using it as
11 temporary usage until we can come up with a plan and the
12 money to do an upgrade, if we ever need it. That to me
13 does not connote government purpose.

14 So what do we have here? Well, we have an
15 extraordinary development potential, as I see it. There
16 was an article in the Business Journal on January 15th
17 and it talked about a thirty-five-million-dollar hotel
18 project coming to North San Jose and the North Mar --
19 First Market -- excuse me -- First Street area and I'd
20 just like to read to you the ending of that article.

21 "Jim Edgar, a senior vice-president
22 of Irvine-based Atlas Hospitality Group
23 was quoted and he said, 'The thing is
24 there's a lot going on in terms of
25 additional demand generators which

1 developers are looking at. The average
2 daily rate right now in San Jose any mid
3 weekday is just insane, quite frankly.
4 It's hard to get a room. You're paying
5 for over \$100 a night at a Motel 6'."

6 So I think we have a property here that has
7 probably the largest value of any of the properties that
8 we have. It's got a marketability, I believe, right now
9 for a hotel or hotel and mixed retail. It's got an
10 eighteen-million-dollar appraisal value and we at this
11 dais have a fiduciary responsibility to the holders of
12 enforceable obligations and we have a responsibility to
13 -- to unwind the Redevelopment Agency.

14 I -- my opinion here is that this is not
15 government use and that it should be considered for sale
16 and that's just my opinion, but I just want to express
17 that. Thank you.

18 MR. ANDREWS: I'd like to just speak to one
19 element in regards of potential for future development.
20 So you might be aware that when we put together the
21 Convention Center facilities district, that created a
22 dedicated revenue source and that revenue source is what
23 we leveraged to create the bond finances for the
24 hundred-and-thirty-five-million-dollar expansion we just
25 did. That revenue source will go into perpetuity and

1 could be renewed for additional expansion, so there is
2 potential to have dedicated revenue sources for future
3 expansion. Is it envisioned right now, no, but it
4 doesn't mean it could never be envisioned.

5 CHAIR MAYOR REED: A couple more things.
6 Don't forget Hempcon in terms of the uses that have been
7 in there. We had eBay Live in there at one time, so
8 we've had a variety of uses. Hempcon is a regular
9 visitor. It's also part of our disaster management plan
10 and so it has a variety of uses and it's being used
11 as -- for a convention center right now. I don't know
12 how long the lifespan of the facility is. Although, it
13 was intended to be temporary until we could build out a
14 permanent facility, it -- we're, obviously, stretching
15 the life of the temporary, but, ultimately, I think it
16 comes down to whether or not there's financing to do a
17 convention center expansion. It's always about the
18 money and that's an interesting question.

19 MR. MURTHA: I'd like to point out the legal
20 issue. To your point, Boardmember Guthrie, the -- I
21 think this one, though, was constructed and used for --
22 again, if you say, "governmental purpose," the language
23 there does say constructed and used and it says, "such
24 as" and it does talk about fire stations and a
25 convention center is not one of those, but I guess --

1 DOF has taken the position if it's not in that "such as"
2 group, it's not governmental purpose and I just -- I,
3 legally -- I disagree. I think a convention center is a
4 traditional governmental purpose. I mean I think all --
5 Santa Clara. If you look at who operates convention
6 centers.

7 Now, having said that, it is within the
8 discretion of the Board -- any governmental purpose
9 property, it's within the discretion of the Oversight
10 Board to -- whether that can be transferred to another
11 public entity. So I -- I don't know that we need to get
12 into that discussion of whether it truly is or isn't. I
13 mean I think there's some legal issues there.

14 The other point I want to make is there is --
15 there is -- again, we used bond financing to acquire and
16 do the project that was constructed, so there are real
17 issues with how do we pay all that off and it is
18 security for some of our HUD loans. So the -- not to
19 say that those are insurmountable, but those create some
20 real issues for us if we just turn around right now and
21 try to sell the property, so --

22 BOARDMEMBER GUTHRIE: Well, you raise an
23 interesting issue and I don't want to go in too much of
24 my frustration when I was with the City. I had a very
25 good career here, but I would tell you that one of the

1 frustrations I had on the City sites, sitting where
2 Julia is sitting now, is that I could never get straight
3 answers from the staff at the Redevelopment Agency.
4 There was a complete wall as to what their funds were
5 and what their funds were being used for and I can also
6 state for the record that my successor, Mr. Johnson, had
7 that same frustration.

8 And when I look at the fact that you have
9 thirty-two properties for sale, how do we know which
10 ones of those had bond funds attributed to them? Have
11 you done a complete study of every amount of money that
12 went on every one of the properties that the RDA owned?
13 Because you're going to have that problem with all of
14 those and I would tell you the simple answer is if we
15 were to sell this for eighteen million dollars and if
16 there was a bond issue that had paid every penny of
17 that, we put the eighteen million dollars into a fund to
18 redeem those bonds at the earliest possible date. It's
19 very simple.

20 CHAIR MAYOR REED: Anybody else on this?
21 Dave.

22 BOARDMEMBER BARRY: I echo John's statements
23 because to me out of almost the entire portfolio, this
24 is some of most valuable properties in this exhibit, 77
25 to 96, and it just seems like there's an incredible

1 opportunity. I would agree that -- with John that all
2 signs of the studies, as I sort of scour the City
3 website and try to understand the reports and the
4 decisions that went into it to get us to this point here
5 today, nothing is telling me of any intention other than
6 having a temporary use tent.

7 And when staff begins to suggest that maybe we
8 should put a lien on it, so transfer for government use
9 and then if it ever is developed, we can go for a lien.
10 There's a mechanism already in place as outlined by DOF
11 for simply transfer to the City subject to a
12 compensation agreement with the taxing entities. But I
13 think that we can all do much better if we go out to the
14 fair market and let a developer come in and do what they
15 do best and I think that anybody in that area would need
16 the cooperation of the City, so I'm -- I want to support
17 the City's actions going forward to find the highest and
18 best use, the highest value of this property.

19 So just kind of along those lines with the --
20 with the HUD 108, we're talking about -- if I'm not
21 mistaken, most of the maturity happens in 2023 and in my
22 world of the Civic Center development project, that's
23 around the corner. I can be patient for future
24 development, if necessary. So I think that I just want
25 to explore all the options that are out there.

1 Thanks.

2 BOARDMEMBER JOHAL: And I would agree with
3 both John and Dave on that.

4 CHAIR MAYOR REED: Anything else on the South
5 Hall? Tony.

6 BOARDMEMBER ESTREMER: Yeah. Mr. Chairman, I
7 wanted to express my agreement with Dave's comments.
8 I'd like to see us explore all options on this
9 particular piece of property.

10 CHAIR MAYOR REED: Anybody else? Okay. Let's
11 move then to Property 97, the California Theater.

12 MR. KEIT: I don't think I have much to add.
13 We talked about it is a JP Morgan. We took that off.
14 We think, again, this is a government use and that's our
15 proposal at this time.

16 We do -- there are -- and maybe attorneys
17 could go into more detail, but there have been a number
18 of transfer of possession and everything, but title has
19 been suggested that it would be and every report shows
20 that the City intended to buy it and at one time if
21 there wasn't some ADA issues that we put in funny --
22 money for to -- to bring it up to code, then that would
23 have taken place.

24 MR. ANDREWS: I'd add just one more comment.
25 So in our discussions with JP Morgan yesterday, this is

1 the one property that currently in our agreement is
2 stated that they understand it's a government use. It
3 should be noted though that DOF did not concur with that
4 opinion and so JP Morgan is aware of that and to the
5 extent that the property either moves back to the
6 Successor Agency for disposition or remains, by the
7 Oversight Board action and concurrence with DOF, a
8 government use, they are -- they are watching that and
9 they realize that this is a property that may or may not
10 be able to be monetized.

11 CHAIR MAYOR REED: John.

12 BOARDMEMBER GUTHRIE: If we put it as
13 government use and send it back to DOF, they're just
14 going to reject it again, aren't they?

15 MR. MURTHA: We're not sure. We want to have
16 the meet and confer with them to discuss. I mean this
17 one is a little different in that there was a co-op
18 agreement in 2004 and, basically, we transferred
19 everything to the City at that time except for title
20 because of some -- some ADA issues. So I think what we
21 want to do is convince DOF that -- that if you go back
22 and look at what occurred before, that -- we think that
23 should supersede. Because of when we can get the
24 meeting with DOF, I think we don't want to put something
25 inconsistent with what we're going to be arguing with

1 them and we assume we'll, hopefully, get some direction
2 from them when we talk if they -- they don't think it's
3 a governmental use. I mean, again, the issue is whether
4 we sell it, if whether there's even a market, but I
5 think at this point we would rather have them say no
6 again and then come back to you with -- with what we'll
7 do after that.

8 BOARDMEMBER GUTHRIE: Have you considered
9 putting this as future development with, you know, the
10 idea that, you know, this Board will probably not stiff
11 you for an asset that has that kind of public use --

12 MR. MURTHA: We thought --

13 BOARDMEMBER GUTHRIE: -- on a compensation
14 agreement?

15 MR. MURTHA: In discussions with the County,
16 that was -- that was a suggestion and, again, I think
17 when -- if it's rejected, I think that's what we would
18 probably propose when we come back. It doesn't seem to
19 fit as well --

20 BOARDMEMBER GUTHRIE: Okay.

21 MR. MURTHA: -- for future development since
22 it's constructed, but it's certainly an option.

23 BOARDMEMBER GUTHRIE: My concern here is not
24 to take this asset away from the City or anything. It's
25 just to make sure that we have smooth sailing with DOF.

1 MR. MURTHA: Right. Okay.

2 BOARDMEMBER JOHAL: And I just wanted to say
3 the last time I was here, I had a specific concern about
4 this property and I continue to have concern; especially
5 in light of the fact that DOF did reject government use
6 and that was my specific concern as well. So I would
7 recommend -- or echo pretty much what John said and just
8 for the record say that I continue to have concerns
9 about government use for this particular property.

10 CHAIR MAYOR REED: Could you talk a little bit
11 about the tax-exempt bonds issue and the fact that
12 Packard Humanities Institute contributed twenty-two
13 million for the restoration. Are we encumbered by that
14 twenty-two million dollars in a way to keep using it in
15 some fashion? I know we -- we appreciate the money. It
16 probably came with some strings.

17 UNIDENTIFIED FEMALE SPEAKER: Mayor, I can
18 answer that question. The only strings come -- that
19 comes with the Packard money is that if we sell the
20 theater, the organ has to go back to the Packard
21 foundation.

22 CHAIR MAYOR REED: It's a very nice organ.

23 UNIDENTIFIED FEMALE SPEAKER: It's a very nice
24 organ and it cost a lot of money to refurbish.

25 CHAIR MAYOR REED: Yes, it does. Okay.

1 Anything else on -- on this one?

2 I had another question that I guess maybe cuts
3 across a lot of these properties because -- and that has
4 to do with land use designation because I know the City
5 Council has taken some action over the years on some of
6 these properties with land use designations like the
7 Billy DeFrank Center, even though, theoretically, some
8 day it will not be -- I think 2094, the leases might run
9 out. So how do we reflect the land use designation or
10 what the land use authority thinks is the appropriate
11 use for the land in this? Do we have to put any -- any
12 reference to that in this agreement? Because I'm sure
13 the City Council thinks the California Theater should
14 continue being a theater and not converted to some other
15 use. Do we need to reflect that in this document or is
16 that just something we put in when we get ready to go
17 out to market? I mean it's obviously part of the
18 disclosure documents. Do we need to have some reference
19 along the way? And you may have some of those
20 references in here in some of these properties like
21 Billy DeFrank.

22 MR. KEIT: Well, two points to that. The
23 zoning is listed in every -- as one of the categories
24 required by DOF and it shows you how little they know
25 about land use as you do, Mayor, and as a former

1 Planning Commissioner as well, that really the General
2 Plan is the higher land use authority under California
3 law, so -- but, yeah, I think we try to address that in
4 here and reflect it, but if -- if there's any specific
5 property that the Board directs us to add certain
6 language in, I think that's appropriate.

7 CHAIR MAYOR REED: Well, I'm thinking about
8 this one, zoning is commercial/general. Is there
9 anything that says we shouldn't also or couldn't also
10 put in another General Plan designation as another
11 element, so that anybody who's thinking about buying
12 property, they're probably going to look at this as a
13 source and they ought to be alerted to whatever the
14 General Plan designation is as well as the zoning. So
15 if we put the General Plan in here, does that create a
16 problem for us on all of the properties or is it just
17 something we'll put in a disclosure document?

18 MR. HYLAND: No. I think we can easily add
19 the General Plan information for each of the properties.
20 With that, we do have Properties Number 1 and 2 were
21 reclassified in the General Plan in 2012 by the Planning
22 Department because the previous use for those properties
23 was to be a convention -- I'm sorry -- a community
24 center and given that that project will not move
25 forward, in the next General Plan amendment update, they

1 -- we will -- we've requested that they change that back
2 to the appropriate mixed, I believe, it's multi-family
3 residential.

4 CHAIR MAYOR REED: Okay. Well, I just
5 recommend that we have the General Plan designation
6 right there with the zoning. It's a simple way for
7 people to get information and be alerted that there may
8 be a difference between the General Plan and the zoning
9 on some of these things because general/commercial
10 doesn't actually tell you much about this site.

11 Anything else on California Theater? Next in
12 order would be Property 98 -- oh, now, we're getting
13 into some of the sort of weird properties. Marriott
14 Hotel revenue participation.

15 MR. KEIT: I will turn this over to Kelly in a
16 minute for some of the details, but I just wanted to --
17 as the supplemental memo, one of your supplemental memos
18 stated on item 6.1, this was a whole category when we
19 were discussing it amongst staff and then later with the
20 County that the law doesn't really speak to where it's
21 revenue generation, but we have the ability to sell and
22 it's not real property, we don't own the property, we
23 don't own -- it's not a ground lease situation, it's
24 either business terms or revenue participation that
25 comes in, but just to be safe we thought we'd put it in

1 the plan, both to make sure DOF is aware of it and the
2 Oversight Board and full transparency and we will bring
3 these back to you as well for approval of whatever sale
4 or agreement we come to with the various -- when we put
5 these out. So we just thought it would be a good idea
6 in there, add it and we can go through these as well.

7 CHAIR MAYOR REED: Okay. On the Marriott
8 Hotel revenue participation, any questions or comments?

9 MR. ANDREWS: I'd like to just add that one
10 comment, again, just reflecting back to our negotiations
11 with JP Morgan. For them, this is one of their highest
12 value assets and I think in our negotiations, it would
13 behoove the Board to consider this being one of the
14 first properties that gets put out for disposition. I
15 think it would show a good faith effort on our part to
16 try to defease the outstanding principal with JP Morgan
17 and could possibly even help with how we negotiate a
18 term sheet with them.

19 CHAIR MAYOR REED: Well, ultimately, JP Morgan
20 is going to get paid. The sooner we can pay them off,
21 the quicker we can save some money on that debt and
22 being able to pay it down probably helps us in terms of
23 the annual fees negotiations as well.

24 MR. ANDREWS: Exactly. In our discussions
25 with JP Morgan yesterday, Mr. Chair, we actually asked

1 them to be creative in how they conceptualize a term
2 sheet for us, knowing that there's going to be
3 properties being rolled out and potential for the
4 outstanding indebtedness to be defeased and possibly
5 even envision triggers, that if a certain amount of
6 money is captured through property sales and used to
7 defease bonds, that then that would trigger a lower
8 rate. So we're trying to use it as part of a
9 negotiating tool, also.

10 CHAIR MAYOR REED: How does this fit in with
11 our property disposition process because as I was
12 thinking of the property disposition process, I'm
13 thinking about dirt mostly. This is a different
14 category. Is there something we need to add to our
15 property disposition process that it acknowledges that
16 some of these things are not what most people think of
17 as real property, but nevertheless as property?

18 MR. MURTHA: Right now we've been treating
19 them, I think, similar to real property. The Marriott,
20 for example, all of them are in recorded documents and I
21 think would qualify as an -- as interest in real
22 property, which is why we ultimately decided to include
23 them. I think, again, we feel that the solicitation
24 process of getting the information out about what this
25 asset is to the largest group of people and then doing a

1 sale at that point, I think still works.

2 If there are suggestions, we'd be open to
3 them. I don't -- we haven't really thought of any
4 reason why they would be done differently. We do
5 understand there are -- we have been getting questions
6 and I think there is a market out there, there are
7 people who buy -- basically, it's a stream of revenue
8 over time, so there is -- there is a market out there,
9 so I think it will be key for us in generating the
10 highest value to make sure we get to that -- the right
11 people, we -- we solicit it to the right group of
12 people.

13 And then, clearly, the Marriott themselves, I
14 think clearly the owner of the hotel, I think, would
15 have an interest in buying this. So I think making sure
16 clearly that they have the opportunity to bid.

17 CHAIR MAYOR REED: I just want to make sure
18 that when we approve the property disposition process
19 that we're allowed for the fact that some of these are
20 going to be unusual and if there's anything we need to
21 put in that that we put it in there because I haven't
22 thought through it -- you, obviously, have -- as to how
23 you dispose of these properties and how it fits into the
24 process, so if you thought of it, that's probably good
25 enough, but -- anything else on the Marriott Hotel.

1 revenue participation?

2 How about the Montgomery Hotel Four Points
3 revenue participation agreement, Property 99?

4 BOARDMEMBER JOHAL: I have a question. Why
5 the revenue table is identical on pages 102 and 104?

6 MR. HYLAND: That is an error on our part and
7 we will amend that and include it in the redline
8 version --

9 BOARDMEMBER JOHAL: Thank you.

10 MR. HYLAND: -- that comes out next.

11 CHAIR MAYOR REED: My guess is the Montgomery
12 Hotel revenues are not as good as the Marriott Hotel
13 revenues.

14 MR. HYLAND: That is correct.

15 CHAIR MAYOR REED: Just guessing on that one.

16 Anything else on the Montgomery Hotel piece?
17 Paseo Plaza retail revenue participation.

18 Okay. Let's move then to Twohy Building
19 revenue participation. Twohy Building is 210 South
20 First Street.

21 MR. HYLAND: I'd like to note for this
22 property and property 102, Number 4, the estimate of
23 current value on the packet that was sent out, it
24 included incorrect information. What you see on the
25 screen is the updated redlined current valuation.

1 CHAIR MAYOR REED: Is that on both properties?

2 MR. HYLAND: Correct.

3 MR. KEIT: And we distributed the correct
4 information.

5 CHAIR MAYOR REED: Okay. Anything else on
6 Twohy Building revenue participation? That was 101.

7 102, we just mentioned, The Globe revenue
8 participation. No longer The Globe. I don't know what
9 they call it now or is it -- what they call it today.

10 MR. MURTHA: I think it is still The Globe.
11 I'd like to point out there is a legal issue here about
12 the participation that it's a gross -- the participation
13 is on gross revenue. They were supposed to sell --
14 under the DDA that we had with them, they were supposed
15 to sell the units. The market for sale was not good, so
16 they asked if they could rent them. We did allow them
17 to rent them. They did not change -- they did not ask
18 to change and we didn't change the formula for how the
19 participation is determined and there's a threshold that
20 they have to meet and if you -- our reading of it is
21 that the revenue that they've gotten for rental applies
22 to the threshold and so that would mean we'd get paid
23 sooner and probably more money. So I just -- I think
24 it's a certain way, but we may have some issues with --
25 with The Globe folks and, unfortunately, again, they'll

1 sell the units, they'll hold the money, so we may have
2 to pursue them based on our interpretation of the
3 document. So I just want everyone to know that there is
4 an issue out there related to that.

5 CHAIR MAYOR REED: Okay. Anything else on The
6 Globe revenue participation?

7 Property Number 103, the Germania Verein
8 revenue participation. This is the -- I think it's
9 called Germania Hall often. Was that the last one, 103?

10 MR. KEIT: Correct.

11 CHAIR MAYOR REED: Back to any general
12 comments or overall comments or any comments on any of
13 the ones we've gone past that we need to revisit.

14 Dave.

15 BOARDMEMBER BARRY: Sure. So two things. One
16 is we're talking about a long-range property management
17 plan and I'm curious what we see is, essentially,
18 property assets and then some revenue agreements and at
19 -- where are the leases or, specifically, easements or
20 anything else that's attributed to a property interest?
21 How many of these are scattered around? I know it's
22 a -- it's a big deal particularly in Sunnyvale and we
23 kind of went through that issue several months ago, but
24 when I look at a property management plan -- just to
25 reiterate, I understand what DOF is asking for and we

1 have to answer the mail, but this is the single-most
2 important governing document. The decisions that we
3 make of the content in this plan are going to be
4 reflected for years and I want to make sure that we're
5 capturing all real property interest. Property
6 management is not just buying or selling, it's
7 everything related to the property asset portfolio.

8 And the second point, and I think I talked to
9 Richard earlier about it, and I'm not sure if you had a
10 chance to circle back, but I would look forward to
11 receiving a Word version of the document, the property
12 management plan. It's helpful for me in the work that I
13 do to have ready and easy access. When you say,
14 "redline version" and I print on my County printer, I
15 don't get redline, we only are allowed to print in black
16 and white and it's duplex and we're on a really tight
17 budget, if you can believe that, but it's helpful
18 because I use a tablet nowadays with Office 365 and
19 SharePoint and I'd like to have access to the document
20 on Word so I can kind of keep my notes going and as
21 other people say compelling points, I want to be able to
22 add them in after the fact. So I would appreciate if I
23 could get a Word version of the doc.

24 CHAIR MAYOR REED: Can we do that, staff?

25 MR. HYLAND: Yeah, we can -- yes, we can

1 explore distributing --

2 BOARDMEMBER BARRY: Thanks.

3 MR. HYLAND: -- Word versions.

4 CHAIR MAYOR REED: Okay. The question about
5 the leases and the other property interests.

6 MR. MURTHA: I think we have included
7 everything we have that we see as, again, a real
8 property interest. We do -- leases, for example, we
9 have a lease of the Santa -- the incubator space, but
10 where we are leasing. So I think we'll -- we are
11 mindful of that and then we did see that in, for
12 example, the Los Angeles long-range property management
13 plan, but in thinking back, to be honest, I can't think
14 of any, for example, an easement, there's nothing that I
15 can think of that fits. I think most of the -- for
16 example, we do have ground leases, which are clearly in
17 this document. We will -- again, we'll go through and
18 if -- if -- again, I think we think we've got everything
19 and if we've missed something, I think we're going to --
20 we would have to come back, but we intend -- you're
21 right, we are hopeful that this includes everything we
22 have.

23 Now, there -- we did come to the Board with
24 what we called were non real property assets, so there
25 is another grouping of so, for example, promissory

1 notes, again, clearly, a right to receive revenue, those
2 were on -- and that's where we originally had these
3 interests for participation. I mean these same -- so
4 you have seen them before, you just saw them under a
5 different heading and, again, when we decided are they
6 interests in real property because they're recorded
7 against the property, we decided to put them in here.
8 So, hopefully, again, we've caught everything and we
9 will maybe look again, but, you know, thank you, so --

10 CHAIR MAYOR REED: Anything else on any of the
11 aspects of the long-range property plan?

12 So the plan, staff, is to make some changes,
13 get it back to us and it's on our agenda for when?

14 MR. KEIT: February 13th.

15 CHAIR MAYOR REED: 13th. And we have to have
16 it submitted by -- to the DOF by when?

17 MR. KEIT: End of February, the 28th.

18 CHAIR MAYOR REED: Okay. Dave.

19 BOARDMEMBER BARRY: And on that point, what
20 happens if it's not turned in by February 28th?

21 MR. KEIT: We don't know. We don't want to --
22 we've tried to meet every single DOF deadline we could
23 so that we're in good standing so when we do go to them,
24 they can endpoint to us and that's my objective as the
25 managing director, but, yeah, this one is unknown, I

1 think in the law, but I can't imagine why we wouldn't be
2 able to get this in in February.

3 BOARDMEMBER BARRY: There's just lots of
4 changes. There's been lots of good discussion over the
5 past, is it three meetings, and I just want to make sure
6 that we're doing the best work that we can do and not
7 just rushing to meet a deadline and whatever is not
8 appropriate, DOF will send back to us and sort of go
9 from there. I'd rather get it right kind of on the
10 first pass. Thank you.

11 CHAIR MAYOR REED: Okay. Anything else on
12 that agenda item overall, long-range property management
13 plan? It's ten minutes to 11:00. I think the last
14 thing we needed to -- that's on the agenda for
15 discussion is the insufficiency of funds variance
16 discussion. How long will that take and -- how long
17 will we have a quorum I guess is the question.

18 MR. ANDREWS: Mr. Chair, I think the
19 discussion would be brief. Staff just brought this memo
20 forward because in the past on multiple occasions, you
21 know, we've talked about the fact that the Successor
22 Agency is an entity that has liabilities in excess of
23 our revenues. This is just one more manifestation of
24 that conversation.

25 In the past when we would talk about our

1 insufficiency, SARA staff would calculate it a certain
2 way. In consultation with the County and, actually,
3 their acting finance director provided a letter on
4 January 28th that provides some very good clarification
5 of what their rationale is for the new methodology when
6 we put forward our insufficiency of funds. That
7 methodology has resulted in what is just one more time a
8 very startling illustration of the extent of the
9 deficiency that our entity has. So in the past when we
10 would talk about insufficiency, we would always put it
11 in somewhere around the eight-million range.

12 With the addition of the County passthrough as
13 part of the methodology for calculating the
14 insufficiency of funds, you can see now that in our last
15 submission to the State, we are now an entity with an
16 insufficiency in excess of forty-three million dollars
17 for the reporting period and so, once again, staff just
18 wanted the Oversight Board to be aware of the fact that,
19 you know, the significance of our liabilities and how
20 that is illustrated to the State has been magnified by
21 the addition of the County passthrough and I think it
22 helps illustrate that the County passthrough is also a
23 significant liability of the Successor Agency and it's
24 one that will continue to grow.

25 CHAIR MAYOR REED: Anybody with questions or

1 comments on -- on that? That didn't take long.

2 I think the rest is reports and
3 correspondence. We have several letters. Any comments
4 from the Board or questions about any of those?

5 I don't have any requests from the public to
6 speak on anything, I think, but let me just check and
7 see if anybody wanted to comment before we wrap it up
8 here.

9 Future agenda items. I think we've got plenty
10 that we've been talking about.

11 We have somebody coming down? All right.
12 Come on down.

13 MS. SUSSMAN: Good morning, everyone. You
14 recognize me probably. Marne Sussman representing Stand
15 for San Jose. You should all have our letter. It's in
16 the packet. I just want to hand another copy to the
17 clerk and again reiterate that we believe that the
18 Diridon properties should not be listed as properties
19 subject to an enforceable obligation in the plan and we
20 would urge you to instead list them as properties for
21 sale. Thank you.

22 CHAIR MAYOR REED: Anybody else? Anything
23 else from the Board that we need to discuss for
24 future --

25 BOARDMEMBER GUTHRIE: I just --

1 CHAIR MAYOR REED: John.

2 BOARDMEMBER GUTHRIE: Mr. Mayor, under future
3 agenda items, I recall that I had some questions about
4 the administrative budget last time and we were going to
5 get back to that, but in the -- in the interest of time,
6 we approved the budget, the administrative budget, just
7 to get it through because we were running against the
8 end of the meeting. I would like an opportunity to have
9 a little more time to look at the next administrative
10 budget before we go through the next ROPS.

11 CHAIR MAYOR REED: Okay. Staff will take care
12 of that. Anything else?

13 I think we're done. We can adjourn unless the
14 Board wants to keep talking. No? I guess we're done.
15 We're adjourned.

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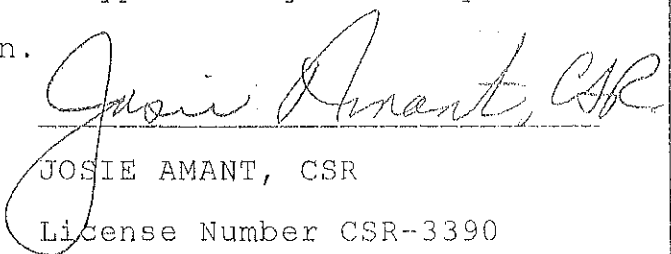
1 CERTIFICATE

2 STATE OF CALIFORNIA)

3)

4 COUNTY OF SANTA CLARA)

5 I, Josie Amant, a Certified Shorthand
6 Reporter, License No. CSR-3390, certify that the
7 foregoing transcription from CD was reported by me, a
8 disinterested person, to the best of my ability, and was
9 thereafter transcribed into typewriting under my
10 direction and supervision.

11 Date: 3/21/14
JOSIE AMANT, CSR

License Number CSR-3390

Exhibit 11

OVERSIGHT BOARD - SUCCESSOR AGENCY TO THE SAN JOSE REDEVELOPMENT AGENCY

AGENDA

THURSDAY, FEBRUARY 13, 2014 – 8:30 Closed Session/9:00 A.M.

SAN JOSE CITY HALL – COUNCIL CHAMBERS

200 E. SANTA CLARA STREET, SAN JOSE, CA 95113

MEMBERS:

Chuck Reed, Chair, City of San Jose
Abraham Andrade, City of San Jose
John Guthrie, County of Santa Clara
Emily Harrison, County of Santa Clara
Ed Maduli, California Community Colleges
Micaela Ochoa, Santa Clara County Office of
Education
Tony Estremera, Santa Clara Valley Water District

ALTERNATE MEMBERS:

David Barry, County of Santa Clara
Kelly Hyland, City of San Jose
Nimrat Johal, Santa Clara County
Office of Education
Pierluigi Oliverio, City of San Jose
David Snow, County of Santa Clara

STAFF:

Ed Shikada, Successor Agency Executive Officer
Richard Doyle, Successor Agency General Counsel
Richard Keit, Successor Agency Managing Director
Julia Cooper, Successor Agency Chief Financial Officer

ORDER OF BUSINESS

1. CALL TO ORDER

2. CLOSED SESSION

Item 2 Supplemental Memorandum, February 11, 2014

Place: City Hall, Conference Room W-133
Time: 8:30 a.m.

Item(s) to be discussed:

CONFERENCE WITH CONFLICTS COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1):

Case Name: Stand for San Jose, et al. v. City, et al.

Name(s) of Parties(s) Involved: STAND FOR SAN JOSE; EILEEN HANNAN;
MICHELLE BRENOT; ROBERT BROWN; AND
ROBERT SHIELDS; CITY OF SAN JOSE; CITY
COUNCIL OF THE CITY OF SAN JOSE;
SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF
SAN JOSE; SUCCESSOR AGENCY
OVERSIGHT BOARD; DIRIDON DEVELOPMENT
AUTHORITY; DOES 1 through 10, inclusive;
ATHLETICS INVESTMENT GROUP, LLC; DOES
11 through 20, inclusive.

Court: Santa Clara County Superior Court

Case No.: 1-13-CV-250372

Amount of Money or Writ of Mandamus and Complaint for Declaratory
Other Relief Sought: Relief and Injunctive Relief and for Attorney's
Fees

3. ADOPTION OF AGENDA

4. APPROVAL OF MINUTES - From January 30, 2014 Meeting

5. CONSENT CALENDAR – None

6. ITEMS SCHEDULED FOR ACTION/DISCUSSION

6.1 Long-Range Property Management Plan (LRPMP) Approval

Adopt a resolution:

Supplemental Memorandum, February 12, 2014

County of Santa Clara Memorandum on LRPMP

Approving the Long Range Property Management Plan

6.2 Approval of the Property Disposition Process

Adopt a resolution:

County of Santa Clara Memorandum – Property Disposition

Approving a Property Disposition Process for the disposition of Successor
Agency owned properties designated for sale in the Long Range Property
Management Plan.

6.3 Presentation and Discussion of ROPS 14-15A

Presentation and Discussion of Proposed July – December 2014 Administrative
Budget and Draft Recognized Obligation Payment Schedule 14-15A

7. REPORTS and CORRESPONDENCE

8. FUTURE AGENDA ITEMS

9. OPEN FORUM

*Members of the Public are invited to speak on any item that does not appear on this
Agenda and that is within the subject matter jurisdiction of the Oversight Board.
Speakers may be limited to no more than two (2) minutes at the discretion of the Chair.*

10. ADJOURNMENT

The next Regular Oversight Board meeting will be held on February 27, 2014 at 9:00 a.m.

Oversight Board meetings will be held at San Jose City Hall located at 200 E. Santa Clara Street, San José, CA 95113.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the Oversight Board will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street Wing, San José, CA 95113 at the same time that the public records are distributed or made available to the Oversight Board.

To request an accommodation or alternative format for an Oversight Board meeting or printed materials, please call 408-535-1252 or

OVERSIGHT BOARD AGENDA
February 13, 2014
Page 3

(408) 294-9337 (TTY) as soon as possible, but at least three business days before the meeting.